

109TH CONGRESS  
1ST SESSION

# S. 1783

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## AN ACT

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to reform the pension funding rules, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
5       “Pension Security and Transparency Act of 2005”.

1 (b) TABLE OF CONTENTS.—The table of contents for  
 2 this Act is as follows:

Sec. 1. Short title and table of contents.

TITLE I—FUNDING AND DEDUCTION RULES FOR SINGLE-EMPLOYER DEFINED BENEFIT PLANS AND RELATED PROVISIONS

Subtitle A—Amendments to Employee Retirement Income Security Act of 1974

- Sec. 101. Minimum funding standards.
- Sec. 102. Funding rules for single-employer defined benefit pension plans.
- Sec. 103. Benefit limitations under single-employer plans.
- Sec. 104. Technical and conforming amendments.
- Sec. 105. Special rules for multiple employer plans of certain cooperatives.
- Sec. 106. Temporary relief for certain rescued plans.

Subtitle B—Amendments to Internal Revenue Code of 1986

- Sec. 111. Modifications of the minimum funding standards.
- Sec. 112. Funding rules applicable to single-employer pension plans.
- Sec. 113. Benefit limitations under single-employer plans.
- Sec. 114. Increase in deduction limit for single-employer plans.
- Sec. 115. Technical and conforming amendments.

Subtitle C—Interest Rate Assumptions and Deductible Amounts for 2006

- Sec. 121. Extension of replacement of 30-year Treasury rates.
- Sec. 122. Deduction limits for plan contributions.
- Sec. 123. Updating deduction rules for combination of plans.

TITLE II—FUNDING AND DEDUCTION RULES FOR MULTIEMPLOYER DEFINED BENEFIT PLANS AND RELATED PROVISIONS

Subtitle A—Funding Rules

PART I—AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

- Sec. 201. Funding rules for multiemployer defined benefit plans.
- Sec. 202. Additional funding rules for multiemployer plans in endangered or critical status.
- Sec. 203. Measures to forestall insolvency of multiemployer plans.
- Sec. 204. Special rule for certain benefits funded under an agreement approved by the Pension Benefit Guaranty Corporation.
- Sec. 205. Withdrawal liability reforms.

PART II—AMENDMENTS TO INTERNAL REVENUE CODE OF 1986

- Sec. 211. Funding rules for multiemployer defined benefit plans.
- Sec. 212. Additional funding rules for multiemployer plans in endangered or critical status.

PART III—SUNSET OF FUNDING RULES

- Sec. 216. Sunset of funding rules.

### Subtitle B—Deduction and Related Provisions

- Sec. 221. Deduction limits for multiemployer plans.
- Sec. 222. Transfer of excess pension assets to multiemployer health plan.

### TITLE III—INTEREST RATE ASSUMPTIONS

- Sec. 301. Interest rate assumption for determination of lump sum distributions.
- Sec. 302. Interest rate assumption for applying benefit limitations to lump sum distributions.
- Sec. 303. Restrictions on funding of nonqualified deferred compensation plans by employers maintaining underfunded or terminated single-employer plans.
- Sec. 304. Modification of pension funding requirements for plans subject to current transition rule.

### TITLE IV—IMPROVEMENTS IN PBGC GUARANTEE PROVISIONS

- Sec. 401. Increases in PBGC premiums.
- Sec. 402. Authority to enter alternative funding agreements to prevent plan terminations.
- Sec. 403. Special funding rules for plans maintained by commercial airlines that are amended to cease future benefit accruals.
- Sec. 404. Limitation on PBGC guarantee of shutdown and other benefits.
- Sec. 405. Rules relating to bankruptcy of employer.
- Sec. 406. PBGC premiums for new plans of small employers.
- Sec. 407. PBGC premiums for small and new plans.
- Sec. 408. Authorization for PBGC to pay interest on premium overpayment refunds.
- Sec. 409. Rules for substantial owner benefits in terminated plans.
- Sec. 410. Acceleration of PBGC computation of benefits attributable to recoveries from employers.
- Sec. 411. Treatment of certain plans where cessation or change in membership of a controlled group.
- Sec. 412. Effect of title.
- Sec. 413. Wage requirement for employers.

### TITLE V—DISCLOSURE

- Sec. 501. Defined benefit plan funding notice.
- Sec. 502. Access to multiemployer pension plan information.
- Sec. 503. Additional annual reporting requirements.
- Sec. 504. Timing of annual reporting requirements.
- Sec. 505. Section 4010 filings with the PBGC.
- Sec. 506. Disclosure of termination information to plan participants.
- Sec. 507. Benefit suspension notice.
- Sec. 508. Study and report by Government Accountability Office.

### TITLE VI—TREATMENT OF CASH BALANCE AND OTHER HYBRID DEFINED BENEFIT PENSION PLANS

- Sec. 601. Prospective application of age discrimination, conversion, and present value assumption rules.
- Sec. 602. Regulations relating to mergers and acquisitions.

### TITLE VII—DIVERSIFICATION RIGHTS AND OTHER PARTICIPANT PROTECTIONS UNDER DEFINED CONTRIBUTION PLANS

- Sec. 701. Defined contribution plans required to provide employees with freedom to invest their plan assets.
- Sec. 702. Notice of freedom to divest employer securities or real property.
- Sec. 703. Periodic pension benefit statements.
- Sec. 704. Notice to participants or beneficiaries of blackout periods.
- Sec. 705. Allowance of, and credit for, additional IRA payments in certain bankruptcy cases.
- Sec. 706. Inapplicability of relief from fiduciary liability during suspension of ability of participant or beneficiary to direct investments.
- Sec. 707. Increase in maximum bond amount.

#### TITLE VIII—INFORMATION TO ASSIST PENSION PLAN PARTICIPANTS

- Sec. 801. Defined contribution plans required to provide adequate investment education to participants.
- Sec. 802. Independent investment advice provided to plan participants.
- Sec. 803. Treatment of qualified retirement planning services.
- Sec. 804. Increase in penalties for coercive interference with exercise of ERISA rights.
- Sec. 805. Administrative provision.

#### TITLE IX—PROVISIONS RELATING TO SPOUSAL PENSION PROTECTION

- Sec. 901. Regulations on time and order of issuance of domestic relations orders.
- Sec. 902. Entitlement of divorced spouses to railroad retirement annuities independent of actual entitlement of employee.
- Sec. 903. Extension of tier II railroad retirement benefits to surviving former spouses pursuant to divorce agreements.
- Sec. 904. Requirement for additional survivor annuity option.

#### TITLE X—IMPROVEMENTS IN PORTABILITY AND DISTRIBUTION RULES

- Sec. 1001. Clarifications regarding purchase of permissive service credit.
- Sec. 1002. Allow rollover of after-tax amounts in annuity contracts.
- Sec. 1003. Clarification of minimum distribution rules for governmental plans.
- Sec. 1004. Waiver of 10 percent early withdrawal penalty tax on certain distributions of pension plans for public safety employees.
- Sec. 1005. Allow rollovers by nonspouse beneficiaries of certain retirement plan distributions.
- Sec. 1006. Faster vesting of employer nonelective contributions.
- Sec. 1007. Allow direct rollovers from retirement plans to Roth IRAS.
- Sec. 1008. Elimination of higher penalty on certain simple plan distributions.
- Sec. 1009. Simple plan portability.
- Sec. 1010. Eligibility for participation in retirement plans.
- Sec. 1011. Transfers to the PBGC.
- Sec. 1012. Missing participants.
- Sec. 1013. Modifications of rules governing hardships and unforeseen financial emergencies.

#### TITLE XI—ADMINISTRATIVE PROVISIONS

- Sec. 1101. Employee plans compliance resolution system.
- Sec. 1102. Notice and consent period regarding distributions.

- Sec. 1103. Reporting simplification.
- Sec. 1104. Voluntary early retirement incentive and employment retention plans maintained by local educational agencies and other entities.
- Sec. 1105. No reduction in unemployment compensation as a result of pension rollovers.
- Sec. 1106. Withholding on distributions from governmental section 457 plans.
- Sec. 1107. Treatment of defined benefit plan as governmental plan.
- Sec. 1108. Increasing participation in cash or deferred plans through automatic contribution arrangements.
- Sec. 1109. Treatment of investment of assets by plan where participant fails to exercise investment election.
- Sec. 1110. Clarification of fiduciary rules.

## TITLE XII—UNITED STATES TAX COURT MODERNIZATION

- Sec. 1200. Amendment of 1986 Code.
- Sec. 1201. Annuities for survivors of Tax Court judges who are assassinated.
- Sec. 1202. Cost-of-living adjustments for Tax Court judicial survivor annuities.
- Sec. 1203. Life insurance coverage for Tax Court judges.
- Sec. 1204. Cost of life insurance coverage for Tax Court judges age 65 or over.
- Sec. 1205. Modification of timing of lump-sum payment of judges' accrued annual leave.
- Sec. 1206. Participation of Tax Court judges in the Thrift Savings Plan.
- Sec. 1207. Exemption of teaching compensation of retired judges from limitation on outside earned income.
- Sec. 1208. General provisions relating to Magistrate Judges of the Tax Court.
- Sec. 1209. Annuities to surviving spouses and dependent children of Magistrate Judges of the Tax Court.
- Sec. 1210. Retirement and annuity program.
- Sec. 1211. Incumbent Magistrate Judges of the Tax Court.
- Sec. 1212. Provisions for recall.
- Sec. 1213. Effective date.

## TITLE XIII—OTHER PROVISIONS

### Subtitle A—Administrative Provision

- Sec. 1301. Provisions relating to plan amendments.
- Sec. 1302. Authority to the Secretary of Labor, Secretary of the Treasury, and the Pension Benefit Guaranty Corporation to postpone certain deadlines.

### Subtitle B—Governmental Pension Plan Equalization

- Sec. 1311. Definition of governmental plan.
- Sec. 1312. Extension to all governmental plans of current moratorium on application of certain nondiscrimination rules applicable to State and local plans.
- Sec. 1313. Clarification that Tribal governments are subject to the same defined benefit plan rules and regulations applied to State and other local governments, their police and firefighters.
- Sec. 1314. Effective date.

### Subtitle C—Miscellaneous Provisions

- Sec. 1321. Transfer of excess funds from black lung disability trusts to United Mine Workers of America Combined Benefit Fund.
- Sec. 1322. Treatment of death benefits from corporate-owned life insurance.

Subtitle D—Other Related Pension Provisions

PART I—HEALTH AND MEDICAL BENEFITS

- Sec. 1331. Use of excess pension assets for future retiree health benefits.
- Sec. 1332. Special rules for funding of collectively bargained retiree health benefits.
- Sec. 1333. Allowance of reserve for medical benefits of plans sponsored by bona fide associations.

PART II—CASH OR DEFERRED ARRANGEMENTS

- Sec. 1336. Treatment of eligible combined defined benefit plans and qualified cash or deferred arrangements.
- Sec. 1337. State and local governments eligible to maintain section 401(k) plans.

PART III—EXCESS CONTRIBUTIONS

- Sec. 1339. Excess contributions.

PART IV—OTHER PROVISIONS

- Sec. 1341. Amendments relating to prohibited transactions.
- Sec. 1342. Federal Task Force on Older Workers.
- Sec. 1343. Technical corrections to Saver Act.

1 **TITLE I—FUNDING AND DEDUC-**  
 2 **TION RULES FOR SINGLE-EM-**  
 3 **PLOYER DEFINED BENEFIT**  
 4 **PLANS AND RELATED PROVI-**  
 5 **SIONS**

6 **Subtitle A—Amendments to Em-**  
 7 **ployee Retirement Income Secu-**  
 8 **rity Act of 1974**

9 **SEC. 101. MINIMUM FUNDING STANDARDS.**

- 10 (a) REPEAL OF EXISTING FUNDING RULES.—Sec-
- 11 tions 302 through 308 of the Employee Retirement In-

1 come Security Act of 1974 (29 U.S.C. 1082 through  
2 1086) are repealed.

3 (b) NEW MINIMUM FUNDING STANDARDS.—Part 3  
4 of subtitle B of title I of such Act (as amended by sub-  
5 section (a)) is amended by inserting after section 301 the  
6 following new section:

7 “MINIMUM FUNDING STANDARDS

8 “SEC. 302. (a) REQUIREMENT TO MEET MINIMUM  
9 FUNDING STANDARD.—

10 “(1) IN GENERAL.—A plan to which this part  
11 applies shall satisfy the minimum funding standard  
12 applicable to the plan for any plan year.

13 “(2) MINIMUM FUNDING STANDARD.—For pur-  
14 poses of paragraph (1), a plan shall be treated as  
15 satisfying the minimum funding standard for a plan  
16 year if—

17 “(A) in the case of a defined benefit plan  
18 which is a single-employer plan, the employer  
19 makes contributions to or under the plan for  
20 the plan year which, in the aggregate, are not  
21 less than the minimum required contribution  
22 determined under section 303 for the plan for  
23 the plan year,

24 “(B) in the case of a money purchase plan  
25 which is a single-employer plan, the employer  
26 makes contributions to or under the plan for

1           the plan year which are required under the  
2           terms of the plan, and

3           “(C) in the case of a multiemployer plan,  
4           the employers make contributions to or under  
5           the plan for any plan year which, in the aggregate,  
6           are sufficient to ensure that the plan does  
7           not have an accumulated funding deficiency  
8           under section 304 as of the end of the plan  
9           year.

10       “(b) LIABILITY FOR CONTRIBUTIONS.—

11           “(1) IN GENERAL.—Except as provided in paragraph (2), the amount of any contribution required  
12           by this section (including any required installments  
13           under section 303(j)) shall be paid by the employer  
14           responsible for making contributions to or under the  
15           plan.  
16           plan.

17           “(2) JOINT AND SEVERAL LIABILITY WHERE  
18           EMPLOYER MEMBER OF CONTROLLED GROUP.—If  
19           the employer referred to in paragraph (1) is a member  
20           of a controlled group, each member of such  
21           group shall be jointly and severally liable for payment  
22           of such contributions.

23       “(c) VARIANCE FROM MINIMUM FUNDING STAND-  
24       ARDS.—



1           “(1) WAIVER IN CASE OF BUSINESS HARD-  
2 SHIP.—

3           “(A) IN GENERAL.—If—

4                   “(i) an employer is (or in the case of  
5 a multiemployer plan, 10 percent or more  
6 of the number of employers contributing to  
7 or under the plan are) unable to satisfy the  
8 minimum funding standard for a plan year  
9 without temporary substantial business  
10 hardship (substantial business hardship in  
11 the case of a multiemployer plan), and

12                   “(ii) application of the standard would  
13 be adverse to the interests of plan partici-  
14 pants in the aggregate,

15 the Secretary of the Treasury may, subject to  
16 subparagraph (C), waive the requirements of  
17 subsection (a) for such year with respect to all  
18 or any portion of the minimum funding stand-  
19 ard. The Secretary of the Treasury shall not  
20 waive the minimum funding standard with re-  
21 spect to a plan for more than 3 of any 15 (5  
22 of any 15 in the case of a multiemployer plan)  
23 consecutive plan years.

1 “(B) EFFECTS OF WAIVER.—If a waiver is  
2 granted under subparagraph (A) for any plan  
3 year—

4 “(i) in the case of a single-employer  
5 plan, the minimum required contribution  
6 under section 303 for the plan year shall  
7 be reduced by the amount of the waived  
8 funding deficiency and such amount shall  
9 be amortized as required under section  
10 303(e), and

11 “(ii) in the case of a multiemployer  
12 plan, the funding standard account shall  
13 be credited under section 304(b)(3)(C)  
14 with the amount of the waived funding de-  
15 ficiency and such amount shall be amor-  
16 tized as required under section  
17 304(b)(2)(C).

18 “(C) WAIVER OF AMORTIZED PORTION  
19 NOT ALLOWED.—The Secretary of the Treasury  
20 may not waive under subparagraph (A) any  
21 portion of the minimum funding standard  
22 under subsection (a) for a plan year which is  
23 attributable to any waived funding deficiency  
24 for any preceding plan year.

1           “(2) DETERMINATION OF BUSINESS HARD-  
2 SHIP.—For purposes of this subsection, the factors  
3 taken into account in determining temporary sub-  
4 stantial business hardship (substantial business  
5 hardship in the case of a multiemployer plan) shall  
6 include (but shall not be limited to) whether or  
7 not—

8                   “(A) the employer is operating at an eco-  
9 nomic loss,

10                   “(B) there is substantial unemployment or  
11 underemployment in the trade or business and  
12 in the industry concerned,

13                   “(C) the sales and profits of the industry  
14 concerned are depressed or declining, and

15                   “(D) it is reasonable to expect that the  
16 plan will be continued only if the waiver is  
17 granted.

18           “(3) WAIVED FUNDING DEFICIENCY.—For pur-  
19 poses of this part, the term ‘waived funding defi-  
20 ciency’ means the portion of the minimum funding  
21 standard under subsection (a) (determined without  
22 regard to the waiver) for a plan year waived by the  
23 Secretary of the Treasury and not satisfied by em-  
24 ployer contributions.

1           “(4) SECURITY FOR WAIVERS FOR SINGLE-EM-  
2           PLOYER PLANS, CONSULTATIONS.—

3           “(A) SECURITY MAY BE REQUIRED.—

4                   “(i) IN GENERAL.—Except as pro-  
5                   vided in subparagraph (C), the Secretary  
6                   of the Treasury may require an employer  
7                   maintaining a defined benefit plan which is  
8                   a single-employer plan (within the meaning  
9                   of section 4001(a)(15)) to provide security  
10                  to such plan as a condition for granting or  
11                  modifying a waiver under paragraph (1).

12                  “(ii) SPECIAL RULES.—Any security  
13                  provided under clause (i) may be perfected  
14                  and enforced only by the Pension Benefit  
15                  Guaranty Corporation, or, at the direction  
16                  of the Corporation, by a contributing spon-  
17                  sor (within the meaning of section  
18                  4001(a)(13)) or a member of such spon-  
19                  sor’s controlled group (within the meaning  
20                  of section 4001(a)(14)).

21           “(B) CONSULTATION WITH THE PENSION  
22           BENEFIT GUARANTY CORPORATION.—Except as  
23           provided in subparagraph (C), the Secretary of  
24           the Treasury shall, before granting or modi-  
25           fying a waiver under this subsection with re-

spect to a plan described in subparagraph  
(A)(i)—

“(i) provide the Pension Benefit  
Guaranty Corporation with—

“(I) notice of the completed ap-  
plication for any waiver or modifica-  
tion, and

“(II) an opportunity to comment  
on such application within 30 days  
after receipt of such notice, and

“(ii) consider—

“(I) any comments of the Cor-  
poration under clause (i)(II), and

“(II) any views of any employee  
organization (within the meaning of  
section 3(4)) representing participants  
in the plan which are submitted in  
writing to the Secretary of the Treas-  
ury in connection with such applica-  
tion.

Information provided to the Corporation under  
this subparagraph shall be considered tax re-  
turn information and subject to the safe-  
guarding and reporting requirements of section  
6103(p) of the Internal Revenue Code of 1986.

1 “(C) EXCEPTION FOR CERTAIN WAIV-  
 2 ERS.—

3 “(i) IN GENERAL.—The preceding  
 4 provisions of this paragraph shall not  
 5 apply to any plan with respect to which the  
 6 sum of—

7 “(I) the aggregate unpaid min-  
 8 imum required contributions for the  
 9 plan year and all preceding plan  
 10 years, and

11 “(II) the present value of all  
 12 waiver amortization installments de-  
 13 termined for the plan year and suc-  
 14 ceeding plan years under section  
 15 303(e)(2),

16 is less than \$1,000,000.

17 “(ii) TREATMENT OF WAIVERS FOR  
 18 WHICH APPLICATIONS ARE PENDING.—The  
 19 amount described in clause (i)(I) shall in-  
 20 clude any increase in such amount which  
 21 would result if all applications for waivers  
 22 of the minimum funding standard under  
 23 this subsection which are pending with re-  
 24 spect to such plan were denied.

1 “(iii) UNPAID MINIMUM REQUIRED  
 2 CONTRIBUTION.—For purposes of this  
 3 subparagraph—

4 “(I) IN GENERAL.—The term  
 5 ‘unpaid minimum required contribu-  
 6 tion’ means, with respect to any plan  
 7 year, any minimum required contribu-  
 8 tion under section 303 for the plan  
 9 year which is not paid on or before  
 10 the due date (as determined under  
 11 section 303(j)(1)) for the plan year.

12 “(II) ORDERING RULE.—For  
 13 purposes of subclause (I), any pay-  
 14 ment to or under a plan for any plan  
 15 year shall be allocated first to unpaid  
 16 minimum required contributions for  
 17 all preceding plan years on a first-in,  
 18 first-out basis and then to the min-  
 19 imum required contribution under sec-  
 20 tion 303 for the plan year.

21 “(5) SPECIAL RULES FOR SINGLE-EMPLOYER  
 22 PLANS.—

23 “(A) APPLICATION MUST BE SUBMITTED  
 24 BEFORE DATE 2½ MONTHS AFTER CLOSE OF  
 25 YEAR.—In the case of a single-employer plan,

no waiver may be granted under this subsection with respect to any plan for any plan year unless an application therefor is submitted to the Secretary of the Treasury not later than the 15th day of the 3rd month beginning after the close of such plan year.

“(B) SPECIAL RULE IF EMPLOYER IS MEMBER OF CONTROLLED GROUP.—In the case of a single-employer plan, if an employer is a member of a controlled group, the temporary substantial business hardship requirements of paragraph (1) shall be treated as met only if such requirements are met—

“(i) with respect to such employer,  
and

“(ii) with respect to the controlled group of which such employer is a member (determined by treating all members of such group as a single employer).

The Secretary of the Treasury may provide that an analysis of a trade or business or industry of a member need not be conducted if the Secretary of the Treasury determines such analysis is not necessary because the taking into account



1 of such member would not significantly affect  
 2 the determination under this paragraph.

3 “(6) ADVANCE NOTICE.—

4 “(A) IN GENERAL.—The Secretary of the  
 5 Treasury shall, before granting a waiver under  
 6 this subsection, require each applicant to pro-  
 7 vide evidence satisfactory to such Secretary that  
 8 the applicant has provided notice of the filing of  
 9 the application for such waiver to each affected  
 10 party (as defined in section 4001(a)(21)) other  
 11 than the Pension Benefit Guaranty Corporation  
 12 and in the case of a multiemployer plan, to each  
 13 employer required to contribute to the plan  
 14 under subsection (b)(1). Such notice shall in-  
 15 clude a description of the extent to which the  
 16 plan is funded for benefits which are guaran-  
 17 teed under title IV and for benefit liabilities.

18 “(B) CONSIDERATION OF RELEVANT IN-  
 19 FORMATION.—The Secretary of the Treasury  
 20 shall consider any relevant information provided  
 21 by a person to whom notice was given under  
 22 subparagraph (A).

23 “(7) RESTRICTION ON PLAN AMENDMENTS.—

24 “(A) IN GENERAL.—No amendment of a  
 25 plan which increases the liabilities of the plan

by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted if a waiver under this subsection or an extension of time under section 304(d) is in effect with respect to the plan, or if a plan amendment described in subsection (d)(2) has been made at any time in the preceding 24 months. If a plan is amended in violation of the preceding sentence, any such waiver, or extension of time, shall not apply to any plan year ending on or after the date on which such amendment is adopted.

“(B) EXCEPTION.—Subparagraph (A) shall not apply to any plan amendment which—

“(i) the Secretary of the Treasury determines to be reasonable and which provides for only de minimis increases in the liabilities of the plan,

“(ii) only repeals an amendment described in subsection (d)(2), or

“(iii) is required as a condition of qualification under part I of subchapter D, of chapter 1 of the Internal Revenue Code of 1986.

1           “(8) CROSS REFERENCE.—For corresponding  
 2           duties of the Secretary of the Treasury with regard  
 3           to implementation of the Internal Revenue Code of  
 4           1986, see section 412(d) of such Code.

5           “(d) MISCELLANEOUS RULES.—

6           “(1) CHANGE IN METHOD OR YEAR.—If the  
 7           funding method, the valuation date, or a plan year  
 8           for a plan is changed, the change shall take effect  
 9           only if approved by the Secretary of the Treasury.

10          “(2) CERTAIN RETROACTIVE PLAN AMEND-  
 11          MENTS.—For purposes of this section, any amend-  
 12          ment applying to a plan year which—

13                 “(A) is adopted after the close of such plan  
 14                 year but no later than 2½ months after the  
 15                 close of the plan year (or, in the case of a mul-  
 16                 tiemployer plan, no later than 2 years after the  
 17                 close of such plan year),

18                 “(B) does not reduce the accrued benefit  
 19                 of any participant determined as of the begin-  
 20                 ning of the first plan year to which the amend-  
 21                 ment applies, and

22                 “(C) does not reduce the accrued benefit of  
 23                 any participant determined as of the time of  
 24                 adoption except to the extent required by the  
 25                 circumstances,

1 shall, at the election of the plan administrator, be  
2 deemed to have been made on the first day of such  
3 plan year. No amendment described in this para-  
4 graph which reduces the accrued benefits of any par-  
5 ticipant shall take effect unless the plan adminis-  
6 trator files a notice with the Secretary of the Treas-  
7 ury notifying him of such amendment and such Sec-  
8 retary has approved such amendment, or within 90  
9 days after the date on which such notice was filed,  
10 failed to disapprove such amendment. No amend-  
11 ment described in this subsection shall be approved  
12 by the Secretary of the Treasury unless such Sec-  
13 retary determines that such amendment is necessary  
14 because of a temporary substantial business hard-  
15 ship (as determined under subsection (c)(2)) or a  
16 substantial business hardship (as so determined) in  
17 the case of a multiemployer plan and that a waiver  
18 under subsection (c) (or, in the case of a multiem-  
19 ployer plan, any extension of the amortization period  
20 under section 304(d)) is unavailable or inadequate.

21 “(3) CONTROLLED GROUP.—For purposes of  
22 this section, the term ‘controlled group’ means any  
23 group treated as a single employer under subsection  
24 (b), (c), (m), or (o) of section 414 of the Internal  
25 Revenue Code of 1986.”.

1 (c) CLERICAL AMENDMENT.—The table of contents  
 2 in section 1 of such Act is amended by striking the items  
 3 relating to sections 302 through 308 and inserting the fol-  
 4 lowing new item:

“Sec. 302. Minimum funding standards.”.

5 (d) EFFECTIVE DATE.—The amendments made by  
 6 this section shall apply to plan years beginning after 2006.

7 **SEC. 102. FUNDING RULES FOR SINGLE-EMPLOYER DE-**  
 8 **FINED BENEFIT PENSION PLANS.**

9 (a) IN GENERAL.—Part 3 of subtitle B of title I of  
 10 the Employee Retirement Income Security Act of 1974 (as  
 11 amended by section 101 of this Act) is amended by insert-  
 12 ing after section 302 the following new section:

13 “MINIMUM FUNDING STANDARDS FOR SINGLE-EMPLOYER  
 14 DEFINED BENEFIT PENSION PLANS

15 “SEC. 303. (a) MINIMUM REQUIRED CONTRIBU-  
 16 TION.—For purposes of this section and section  
 17 302(a)(2)(A), except as provided in subsection (f), the  
 18 term ‘minimum required contribution’ means, with respect  
 19 to any plan year of a defined benefit plan which is a single  
 20 employer plan—

21 “(1) in any case in which the value of plan as-  
 22 sets of the plan (as reduced under subsection (f)(4))  
 23 is less than the funding target of the plan for the  
 24 plan year, the sum of—

1                   “(A) the target normal cost of the plan for  
2                   the plan year,

3                   “(B) the shortfall amortization charge (if  
4                   any) for the plan for the plan year determined  
5                   under subsection (c), and

6                   “(C) the waiver amortization charge (if  
7                   any) for the plan for the plan year as deter-  
8                   mined under subsection (e); or

9                   “(2) in any case in which the value of plan as-  
10                  sets of the plan (as reduced under subsection (f)(4))  
11                  equals or exceeds the funding target of the plan for  
12                  the plan year, the target normal cost of the plan for  
13                  the plan year reduced (but not below zero) by any  
14                  such excess.

15               “(b) TARGET NORMAL COST.—For purposes of this  
16               section, except as provided in subsection (i)(2) with re-  
17               spect to plans in at-risk status, the term ‘target normal  
18               cost’ means, for any plan year, the present value of all  
19               benefits which are expected to accrue or to be earned  
20               under the plan during the plan year. For purposes of this  
21               subsection, if any benefit attributable to services per-  
22               formed in a preceding plan year is increased by reason  
23               of any increase in compensation during the current plan  
24               year, the increase in such benefit shall be treated as hav-  
25               ing accrued during the current plan year.

1 “(c) SHORTFALL AMORTIZATION CHARGE.—

2 “(1) IN GENERAL.—For purposes of this sec-  
 3 tion, the shortfall amortization charge for a plan for  
 4 any plan year is the aggregate total of the shortfall  
 5 amortization installments for such plan year with re-  
 6 spect to the shortfall amortization bases for such  
 7 plan year and each of the 6 preceding plan years.

8 “(2) SHORTFALL AMORTIZATION INSTALL-  
 9 MENT.—For purposes of paragraph (1)—

10 “(A) DETERMINATION.—The shortfall am-  
 11 ortization installments are the amounts nec-  
 12 essary to amortize the shortfall amortization  
 13 base of the plan for any plan year in level an-  
 14 nual installments over the 7-plan-year period  
 15 beginning with such plan year.

16 “(B) SHORTFALL INSTALLMENT.—The  
 17 shortfall amortization installment for any plan  
 18 year in the 7-plan-year period under subpara-  
 19 graph (A) with respect to any shortfall amorti-  
 20 zation base is the annual installment deter-  
 21 mined under subparagraph (A) for that year for  
 22 that base.

23 “(C) SEGMENT RATES.—In determining  
 24 any shortfall amortization installment under  
 25 this paragraph, the plan sponsor shall use the

1 segment rates determined under subparagraph  
 2 (C) of subsection (h)(2), applied under rules  
 3 similar to the rules of subparagraph (B) of sub-  
 4 section (h)(2).

5 “(3) SHORTFALL AMORTIZATION BASE.—For  
 6 purposes of this section, the shortfall amortization  
 7 base of a plan for a plan year is the excess (if any)  
 8 of—

9 “(A) the funding shortfall of such plan for  
 10 such plan year, over

11 “(B) the present value (determined using  
 12 the segment rates determined under subpara-  
 13 graph (C) of subsection (h)(2), applied under  
 14 rules similar to the rules of subparagraph (B)  
 15 of subsection (h)(2)) of the aggregate total of  
 16 the shortfall amortization installments and  
 17 waiver amortization installments which have  
 18 been determined for such plan year and any  
 19 succeeding plan year with respect to the short-  
 20 fall amortization bases and waiver amortization  
 21 bases of the plan for any plan year preceding  
 22 such plan year.

23 “(4) FUNDING SHORTFALL.—

24 “(A) IN GENERAL.—For purposes of this  
 25 section, except as provided in subparagraph



1 (B), the funding shortfall of a plan for any plan  
 2 year is the excess (if any) of—

3 “(i) the funding target of the plan for  
 4 the plan year, over

5 “(ii) the value of plan assets of the  
 6 plan (as reduced under subsection (f)(4))  
 7 for the plan year which are held by the  
 8 plan on the valuation date.

9 “(B) TRANSITION RULE FOR AMORTIZA-  
 10 TION OF FUNDING SHORTFALL.—

11 “(i) IN GENERAL.—Solely for pur-  
 12 poses of applying paragraph (3) in the case  
 13 of plan years beginning after 2006 and be-  
 14 fore 2011, only the applicable percentage  
 15 of the funding target shall be taken into  
 16 account under paragraph (3)(A) in deter-  
 17 mining the funding shortfall for the plan  
 18 year.

19 “(ii) APPLICABLE PERCENTAGE.—For  
 20 purposes of subparagraph (A)—

21 “(I) IN GENERAL.—Except as  
 22 provided in subclause (II), the appli-  
 23 cable percentage shall be 93 percent  
 24 for plan years beginning in 2007, 96  
 25 percent for plan years beginning in

1                   2008, and 100 percent for any suc-  
 2                   ceeding plan year.

3                   “(II) SMALL PLANS.—In the case  
 4                   of a plan described in subsection  
 5                   (g)(2)(B), the applicable percentage  
 6                   shall be determined in accordance  
 7                   with the following table:

<b>“In the case of a plan year beginning in calendar year:</b>	<b>The applicable percentage is—</b>
2007 .....	92
2008 .....	94
2009 .....	96
2010 .....	98.

8                   “(5) EARLY DEEMED AMORTIZATION UPON AT-  
 9                   TAINMENT OF FUNDING TARGET.—In any case in  
 10                  which the funding shortfall of a plan for a plan year  
 11                  is zero, for purposes of determining the shortfall am-  
 12                  ortization charge for such plan year and succeeding  
 13                  plan years, the shortfall amortization bases for all  
 14                  preceding plan years (and all shortfall amortization  
 15                  installments determined with respect to such bases)  
 16                  shall be reduced to zero.

17                  “(d) RULES RELATING TO FUNDING TARGET.—For  
 18                  purposes of this section—

19                  “(1) FUNDING TARGET.—Except as provided in  
 20                  subsection (i)(1) with respect to plans in at-risk sta-  
 21                  tus, the funding target of a plan for a plan year is

1 the present value of all benefits accrued or earned  
 2 under the plan as of the beginning of the plan year.

3 “(2) FUNDING TARGET ATTAINMENT PERCENT-  
 4 AGE.—The ‘funding target attainment percentage’ of  
 5 a plan for a plan year is the ratio (expressed as a  
 6 percentage) which—

7 “(A) the value of plan assets for the plan  
 8 year, bears to

9 “(B) the funding target of the plan for the  
 10 plan year (determined without regard to sub-  
 11 section (i)(1)).

12 “(e) WAIVER AMORTIZATION CHARGE.—

13 “(1) DETERMINATION OF WAIVER AMORTIZA-  
 14 TION CHARGE.—The waiver amortization charge (if  
 15 any) for a plan for any plan year is the aggregate  
 16 total of the waiver amortization installments for  
 17 such plan year with respect to the waiver amortiza-  
 18 tion bases for each of the 5 preceding plan years.

19 “(2) WAIVER AMORTIZATION INSTALLMENT.—  
 20 For purposes of paragraph (1)—

21 “(A) DETERMINATION.—The waiver amor-  
 22 tization installments are the amounts necessary  
 23 to amortize the waiver amortization base of the  
 24 plan for any plan year in level annual install-

1           ments over a period of 5 plan years beginning  
2           with the succeeding plan year.

3           “(B) WAIVER INSTALLMENT.—The waiver  
4           amortization installment for any plan year in  
5           the 5-year period under subparagraph (A) with  
6           respect to any waiver amortization base is the  
7           annual installment determined under subpara-  
8           graph (A) for that year for that base.

9           “(3) INTEREST RATE.—In determining any  
10          waiver amortization installment under this sub-  
11          section, the plan sponsor shall use the segment rates  
12          determined under subparagraph (C) of subsection  
13          (h)(2), applied under rules similar to the rules of  
14          subparagraph (B) of subsection (h)(2).

15          “(4) WAIVER AMORTIZATION BASE.—The waiv-  
16          er amortization base of a plan for a plan year is the  
17          amount of the waived funding deficiency (if any) for  
18          such plan year under section 302(c).

19          “(5) EARLY DEEMED AMORTIZATION UPON AT-  
20          TAINMENT OF FUNDING TARGET.—In any case in  
21          which the funding shortfall of a plan for a plan year  
22          is zero, for purposes of determining the waiver am-  
23          ortization charge for such plan year and succeeding  
24          plan years, the waiver amortization bases for all pre-  
25          ceding plan years (and all waiver amortization in-

1        stallments with respect to such bases) shall be re-  
 2        duced to zero.

3        “(f) USE OF PREFUNDING BALANCES TO SATISFY  
 4        MINIMUM REQUIRED CONTRIBUTIONS.—

5                “(1) IN GENERAL.—A plan sponsor may credit  
 6        any amount of a plan’s prefunding balance for a  
 7        plan year against the minimum required contribu-  
 8        tion for the plan year and the amount of the con-  
 9        tributions an employer is required to make under  
 10       section 302(b) for the plan year shall be reduced by  
 11       the amount so credited. Any such amount shall be  
 12       credited on the first day of the plan year.

13               “(2) PREFUNDING BALANCE.—

14                “(A) BEGINNING BALANCE.—The begin-  
 15        ning balance of a prefunding balance main-  
 16        tained by a plan shall be zero, except that if a  
 17        plan was in effect for a plan year beginning in  
 18        2006 and had a positive balance in the funding  
 19        standard account under section 302(b) (as in  
 20        effect for such plan year) as of the end of such  
 21        plan year, the beginning balance for the plan  
 22        for its first plan year beginning after 2006 shall  
 23        be such positive balance.

24               “(B) INCREASES.—

1           “(i) IN GENERAL.—As of the first day  
 2 of each plan year beginning after 2007, the  
 3 prefunding balance of a plan shall be in-  
 4 creased by the excess (if any) of—

5                   “(I) the aggregate amount of em-  
 6 ployer contributions to the plan for  
 7 the preceding plan year, over

8                   “(II) the minimum required con-  
 9 tribution for the preceding plan year.

10           “(ii) ADJUSTMENTS FOR INTEREST.—  
 11 Any excess contributions under clause (i)  
 12 shall be properly adjusted for interest ac-  
 13 cruing for the periods between the first  
 14 day of the current plan year and the dates  
 15 on which the excess contributions were  
 16 made, determined by using the effective in-  
 17 terest rate for the preceding plan year and  
 18 by treating contributions as being first  
 19 used to satisfy the minimum required con-  
 20 tribution.

21           “(iii) CERTAIN CONTRIBUTIONS DIS-  
 22 REGARDED.—Any contribution which is re-  
 23 quired to be made under section 206(g) in  
 24 addition to any contribution required

1 under this section shall not be taken into  
 2 account for purposes of clause (i).

3 “(C) DECREASES.—As of the first day of  
 4 each plan year after 2007, the prefunding bal-  
 5 ance of a plan shall be decreased (but not below  
 6 zero) by the amount of the balance credited  
 7 under paragraph (1) against the minimum re-  
 8 quired contribution of the plan for the pre-  
 9 ceding plan year.

10 “(D) ADJUSTMENTS FOR INVESTMENT EX-  
 11 PERIENCE.—In determining the prefunding bal-  
 12 ance of a plan as of the first day of the plan  
 13 year, the plan sponsor shall, in accordance with  
 14 regulations prescribed by the Secretary of the  
 15 Treasury, adjust such balance to reflect the  
 16 rate of return on plan assets for the preceding  
 17 plan year. Notwithstanding subsection (g)(3),  
 18 such rate of return shall be determined on the  
 19 basis of fair market value and shall properly  
 20 take into account, in accordance with such reg-  
 21 ulations, all contributions, distributions, and  
 22 other plan payments made during such period.

23 “(3) LIMITATION FOR UNDERFUNDED PLANS.—

24 “(A) IN GENERAL.—If the ratio (expressed  
 25 as a percentage) for any plan year which—

1 “(i) the value of plan assets for the  
 2 preceding plan year, bears to

3 “(ii) the funding target of the plan for  
 4 the preceding plan year (determined with-  
 5 out regard to subsection (i)(1)),

6 is less than 80 percent, the preceding provisions  
 7 of this subsection shall not apply unless employ-  
 8 ers liable for contributions to the plan under  
 9 section 302(b) make contributions to the plan  
 10 for the plan year in an aggregate amount not  
 11 less than the amount determined under sub-  
 12 paragraph (B). Any contribution required by  
 13 this subparagraph may not be reduced by any  
 14 credit otherwise allowable under paragraph (1).

15 “(B) APPLICABLE AMOUNT.—The amount  
 16 determined under this subparagraph for any  
 17 plan year is the greater of—

18 “(i) the target normal cost of the plan  
 19 for the plan year, or

20 “(ii) 25 percent of the minimum re-  
 21 quired contribution under subsection (a)  
 22 for the plan year without regard to this  
 23 subsection.

24 “(4) REDUCTION IN VALUE OF ASSETS.—Solely  
 25 for purposes of applying subsections (a) and



1 (c)(4)(A)(ii) in determining the minimum required  
 2 contribution under this section, the value of the plan  
 3 assets otherwise determined without regard to this  
 4 paragraph shall be reduced by the amount of the  
 5 prefunding balance under this subsection.

6 “(g) VALUATION OF PLAN ASSETS AND LIABIL-  
 7 ITIES.—

8 “(1) TIMING OF DETERMINATIONS.—Except as  
 9 otherwise provided under this subsection, all deter-  
 10 minations under this section for a plan year shall be  
 11 made as of the valuation date of the plan for such  
 12 plan year.

13 “(2) VALUATION DATE.—For purposes of this  
 14 section—

15 “(A) IN GENERAL.—Except as provided in  
 16 subparagraph (B), the valuation date of a plan  
 17 for any plan year shall be the first day of the  
 18 plan year.

19 “(B) EXCEPTION FOR SMALL PLANS.—If,  
 20 on each day during the preceding plan year, a  
 21 plan had 100 or fewer participants, the plan  
 22 may designate any day during the plan year as  
 23 its valuation date for such plan year and suc-  
 24 ceeding plan years. For purposes of this sub-  
 25 paragraph, all defined benefit plans (other than

multiemployer plans) maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only employees of such employer or member shall be taken into account.

“(C) APPLICATION OF CERTAIN RULES IN DETERMINATION OF PLAN SIZE.—For purposes of this paragraph—

“(i) PLANS NOT IN EXISTENCE IN PRECEDING YEAR.—In the case of the first plan year of any plan, subparagraph (B) shall apply to such plan by taking into account the number of participants that the plan is reasonably expected to have on days during such first plan year.

“(ii) PREDECESSORS.—Any reference in subparagraph (B) to an employer shall include a reference to any predecessor of such employer.

“(3) DETERMINATION OF VALUE OF PLAN ASSETS.—For purposes of this section—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the value of plan assets shall be the fair market value of the assets.

1           “(B) AVERAGING ALLOWED.—A plan may  
 2           determine the value of plan assets on the basis  
 3           of any reasonable actuarial method of valuation  
 4           providing for the averaging of fair market val-  
 5           ues, but only if such method—

6                   “(i) is permitted under regulations  
 7                   prescribed by the Secretary of the Treas-  
 8                   ury, and

9                   “(ii) does not provide for averaging of  
 10                  such values over more than the period be-  
 11                  ginning on the last day of the 12th month  
 12                  preceding the valuation date and ending on  
 13                  the valuation date (or a similar period in  
 14                  the case of a valuation date which is not  
 15                  the 1st day of a month).

16           “(4) ACCOUNTING FOR CONTRIBUTION RE-  
 17           CEIPTS.—For purposes of determining the value of  
 18           assets under paragraph (3)—

19                   “(A) PRIOR YEAR CONTRIBUTIONS.—If—

20                           “(i) an employer makes any contribu-  
 21                           tion to the plan after the valuation date for  
 22                           the plan year in which the contribution is  
 23                           made, and

24                           “(ii) the contribution is for a pre-  
 25                           ceding plan year,

1 the contribution shall be taken into account as  
 2 an asset of the plan as of the valuation date,  
 3 except that in the case of any plan year begin-  
 4 ning after 2007, only the present value (deter-  
 5 mined as of the valuation date) of such con-  
 6 tribution may be taken into account. For pur-  
 7 poses of the preceding sentence, present value  
 8 shall be determined using the effective interest  
 9 rate for the preceding plan year to which the  
 10 contribution is properly allocable.

11 “(B) SPECIAL RULE FOR CURRENT YEAR  
 12 CONTRIBUTIONS MADE BEFORE VALUATION  
 13 DATE.—If any contributions for any plan year  
 14 are made to or under the plan during the plan  
 15 year but before the valuation date for the plan  
 16 year, the assets of the plan as of the valuation  
 17 date shall not include—

18 “(i) such contributions, and

19 “(ii) interest on such contributions for  
 20 the period between the date of the con-  
 21 tributions and the valuation date, deter-  
 22 mined by using the effective interest rate  
 23 for the plan year.

24 “(h) ACTUARIAL ASSUMPTIONS AND METHODS.—

1           “(1) IN GENERAL.—Subject to this subsection,  
 2           the determination of any present value or other com-  
 3           putation under this section shall be made on the  
 4           basis of actuarial assumptions and methods—

5                   “(A) each of which is reasonable (taking  
 6                   into account the experience of the plan and rea-  
 7                   sonable expectations), and

8                   “(B) which, in combination, offer the actu-  
 9                   ary’s best estimate of anticipated experience  
 10                  under the plan.

11           “(2) INTEREST RATES.—

12                   “(A) EFFECTIVE INTEREST RATE.—For  
 13                   purposes of this section, the term ‘effective in-  
 14                   terest rate’ means, with respect to any plan for  
 15                   any plan year, the single rate of interest which,  
 16                   if used to determine the present value of the  
 17                   plan’s accrued or earned benefits referred to in  
 18                   subsection (d)(1), would result in an amount  
 19                   equal to the funding target of the plan for such  
 20                   plan year.

21                   “(B) INTEREST RATES FOR DETERMINING  
 22                   FUNDING TARGET.—For purposes of deter-  
 23                   mining the funding target of a plan for any  
 24                   plan year, the interest rate used in determining

1 the present value of the benefits of the plan  
 2 shall be—

3 “(i) in the case of benefits reasonably  
 4 determined to be payable during the 5-year  
 5 period beginning on the first day of the  
 6 plan year, the first segment rate with re-  
 7 spect to the applicable month,

8 “(ii) in the case of benefits reasonably  
 9 determined to be payable during the 15-  
 10 year period beginning at the end of the pe-  
 11 riod described in clause (i), the second seg-  
 12 ment rate with respect to the applicable  
 13 month, and

14 “(iii) in the case of benefits reason-  
 15 ably determined to be payable after the pe-  
 16 riod described in clause (ii), the third seg-  
 17 ment rate with respect to the applicable  
 18 month.

19 “(C) SEGMENT RATES.—For purposes of  
 20 this paragraph—

21 “(i) FIRST SEGMENT RATE.—The  
 22 term ‘first segment rate’ means, with re-  
 23 spect to any month, the single rate of in-  
 24 terest which shall be determined by the  
 25 Secretary of the Treasury for such month

on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during the 5-year period commencing with such month.

“(ii) SECOND SEGMENT RATE.—The term ‘second segment rate’ means, with respect to any month, the single rate of interest which shall be determined by the Secretary of the Treasury for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which is based on bonds maturing during each of the years in the 15-year period beginning at the end of the period described in clause (i).

“(iii) THIRD SEGMENT RATE.—The term ‘third segment rate’ means, with respect to any month, the single rate of interest which shall be determined by the Secretary of the Treasury for such month on the basis of the corporate bond yield curve for such month, taking into account only that portion of such yield curve which

1 is based on bonds maturing during periods  
 2 beginning after the period described in  
 3 clause (ii).

4 “(D) CORPORATE BOND YIELD CURVE.—  
 5 The term ‘corporate bond yield curve’ means,  
 6 with respect to any month, a yield curve which  
 7 is prescribed by the Secretary of the Treasury  
 8 for such month and which reflects the average,  
 9 for the 12-month period ending with the month  
 10 preceding such month, of yields on investment  
 11 grade corporate bonds with varying maturities.

12 “(E) APPLICABLE MONTH.—For purposes  
 13 of this paragraph, the term ‘applicable month’  
 14 means, with respect to any plan for any plan  
 15 year, the month which includes the valuation  
 16 date of such plan for such plan year or, at the  
 17 election of the plan administrator, any of the 4  
 18 months which precede such month. Any election  
 19 made under this subparagraph shall apply to  
 20 the plan year for which the election is made and  
 21 all succeeding plan years, unless the election is  
 22 revoked with the consent of the Secretary of the  
 23 Treasury.

24 “(F) PUBLICATION REQUIREMENTS.—The  
 25 Secretary of the Treasury shall publish for each



1 month the corporate bond yield curve for such  
 2 month and each of the rates determined under  
 3 this paragraph for such month. The Secretary  
 4 of the Treasury shall also publish a description  
 5 of the methodology used to determine such yield  
 6 curve and such rates which is sufficiently de-  
 7 tailed to enable plans to make reasonable pro-  
 8 jections regarding the yield curve and such  
 9 rates for future months based on the plan's  
 10 projection of future interest rates.

11 “(G) TRANSITION RULE.—

12 “(i) IN GENERAL.—Notwithstanding  
 13 the preceding provisions of this paragraph,  
 14 for plan years beginning in 2007 or 2008,  
 15 the first, second, or third segment rate for  
 16 a plan with respect to any month shall be  
 17 equal to the sum of—

18 “(I) the product of such rate for  
 19 such month determined without re-  
 20 gard to this subparagraph, multiplied  
 21 by the applicable percentage, and

22 “(II) the product of the rate de-  
 23 termined under the rules of section  
 24 302(b)(5)(B)(ii)(II) (as in effect for  
 25 plan years beginning in 2006), multi-

1                   plied by a percentage equal to 100  
 2                   percent minus the applicable percent-  
 3                   age.

4                   “(ii) APPLICABLE PERCENTAGE.—For  
 5                   purposes of clause (i), the applicable per-  
 6                   centage is  $33\frac{1}{3}$  percent for plan years be-  
 7                   ginning in 2007 and  $66\frac{2}{3}$  percent for plan  
 8                   years beginning in 2008.

9                   “(3) MORTALITY TABLES.—

10                   “(A) IN GENERAL.—Except as provided in  
 11                   subparagraphs (C) and (D), the mortality table  
 12                   used in determining any present value or mak-  
 13                   ing any computation under this section shall be  
 14                   the RP-2000 Combined Mortality Table, using  
 15                   Scale AA, as published by the Society of Actu-  
 16                   aries, as in effect on the date of the enactment  
 17                   of the Pension Security and Transparency Act  
 18                   of 2005 and as revised from time to time under  
 19                   subparagraph (B).

20                   “(B) PERIODIC REVISION.—The Secretary  
 21                   of the Treasury shall (at least every 10 years)  
 22                   make revisions in any table in effect under sub-  
 23                   paragraph (A) to reflect the actual experience  
 24                   of pension plans and projected trends in such  
 25                   experience.

1 “(C) SUBSTITUTE MORTALITY TABLE.—

2 “(i) IN GENERAL.—Upon request by  
 3 the plan sponsor and approval by the Sec-  
 4 retary of the Treasury, a mortality table  
 5 which meets the requirements of clause (ii)  
 6 shall be used in determining any present  
 7 value or making any computation under  
 8 this section during the 10-consecutive plan  
 9 year period specified in the request. A  
 10 mortality table described in this clause  
 11 shall cease to be in effect if the plan actu-  
 12 ary determines at any time that such table  
 13 does not meet the requirements of clause  
 14 (ii).

15 “(ii) REQUIREMENTS.—A mortality  
 16 table meets the requirements of this clause  
 17 if the Secretary of the Treasury determines  
 18 that—

19 “(I) there is a sufficient number  
 20 of plan participants, and the pension  
 21 plans have been maintained for a suf-  
 22 ficient period of time, to have credible  
 23 information necessary for purposes of  
 24 subclause (II),

1 “(II) such table reflects the ac-  
 2 tual experience of the pension plans  
 3 maintained by the sponsor and pro-  
 4 jected trends in general mortality ex-  
 5 perience,

6 “(III) except as provided by the  
 7 Secretary, such table will be used by  
 8 all plans maintained by the plan spon-  
 9 sor and all members of any controlled  
 10 group which includes the plan spon-  
 11 sor, and

12 “(IV) such table is significantly  
 13 different from the table described in  
 14 subparagraph (A).

15 “(iii) DEADLINE FOR DISPOSITION OF  
 16 APPLICATION.—Any mortality table sub-  
 17 mitted to the Secretary of the Treasury for  
 18 approval under this subparagraph shall be  
 19 treated as in effect for the first plan year  
 20 in the 10-year period described in clause  
 21 (i) unless the Secretary of the Treasury,  
 22 during the 180-day period beginning on  
 23 the date of such submission, disapproves of  
 24 such table and provides the reasons that  
 25 such table fails to meet the requirements

1 of clause (ii). The 180-day period shall be  
 2 extended for any period during which the  
 3 Secretary of the Treasury has requested  
 4 information from the plan sponsor and  
 5 such information has not been provided.

6 “(D) SEPARATE MORTALITY TABLES FOR  
 7 THE DISABLED.—Notwithstanding subpara-  
 8 graph (A)—

9 “(i) IN GENERAL.—The Secretary of  
 10 the Treasury shall establish mortality ta-  
 11 bles which may be used (in lieu of the ta-  
 12 bles under subparagraph (A)) under this  
 13 subsection for individuals who are entitled  
 14 to benefits under the plan on account of  
 15 disability. The Secretary of the Treasury  
 16 shall establish separate tables for individ-  
 17 uals whose disabilities occur in plan years  
 18 beginning before January 1, 1995, and for  
 19 individuals whose disabilities occur in plan  
 20 years beginning on or after such date.

21 “(ii) SPECIAL RULE FOR DISABILITIES  
 22 OCCURRING AFTER 1994.—In the case of  
 23 disabilities occurring in plan years begin-  
 24 ning after December 31, 1994, the tables  
 25 under clause (i) shall apply only with re-

1           spect to individuals described in such sub-  
 2           clause who are disabled within the meaning  
 3           of title II of the Social Security Act and  
 4           the regulations thereunder.

5           “(iii) PERIODIC REVISION.—The Sec-  
 6           retary of the Treasury shall (at least every  
 7           10 years) make revisions in any table in ef-  
 8           fect under clause (i) to reflect the actual  
 9           experience of pension plans and projected  
 10          trends in such experience.

11          “(E) TRANSITION RULE.—Under regula-  
 12          tions of the Secretary of the Treasury, any dif-  
 13          ference in present value resulting from any dif-  
 14          ferences in assumptions as set forth in the mor-  
 15          tality table specified in subparagraph (A) and  
 16          assumptions as set forth in the mortality table  
 17          described in section 302(d)(7)(C)(ii) (as in ef-  
 18          fect for plan years beginning in 2006) shall be  
 19          phased in ratably over the first period of 5 plan  
 20          years beginning in or after 2007 so as to be  
 21          fully effective for the fifth plan year.

22          “(4) PROBABILITY OF BENEFIT PAYMENTS IN  
 23          THE FORM OF LUMP SUMS OR OTHER OPTIONAL  
 24          FORMS.—For purposes of determining any present

1 value or making any computation under this section,  
 2 there shall be taken into account—

3 “(A) the probability that future benefit  
 4 payments under the plan will be made in the  
 5 form of optional forms of benefits provided  
 6 under the plan (including lump sum distribu-  
 7 tions, determined on the basis of the plan’s ex-  
 8 perience and other related assumptions), and

9 “(B) any difference in the present value of  
 10 such future benefit payments resulting from the  
 11 use of actuarial assumptions, in determining  
 12 benefit payments in any such optional form of  
 13 benefits, which are different from those speci-  
 14 fied in this subsection.

15 “(5) APPROVAL OF LARGE CHANGES IN ACTU-  
 16 ARIAL ASSUMPTIONS.—

17 “(A) IN GENERAL.—No actuarial assump-  
 18 tion used to determine the funding target for a  
 19 plan to which this paragraph applies may be  
 20 changed without the approval of the Secretary  
 21 of the Treasury.

22 “(B) PLANS TO WHICH PARAGRAPH AP-  
 23 PLIES.—This paragraph shall apply to a plan  
 24 only if—

“(i) the aggregate unfunded benefits as of the close of the preceding plan year (as determined under section 4006(a)(3)(E)(iii)) of such plan and all other plans maintained by the contributing sponsors (as defined in section 4001(a)(13)) and members of such sponsors’ controlled groups (as defined in section 4001(a)(14)) which are covered by title IV (disregarding plans with no unfunded benefits) exceed \$50,000,000; and

“(ii) the change in assumptions (determined after taking into account any changes in interest rate and mortality table) results in a decrease in the funding shortfall of the plan for the current plan year that exceeds \$50,000,000, or that exceeds \$5,000,000 and that is 5 percent or more of the funding target of the plan before such change.

“(i) SPECIAL RULES FOR AT-RISK PLANS.—

“(1) FUNDING TARGET FOR PLANS IN AT-RISK STATUS.—

“(A) IN GENERAL.—In the case of a plan to which this subsection applies for a plan year,



the funding target of the plan for the plan year is equal to the present value of all liabilities to participants and their beneficiaries under the plan for the plan year, as determined by using the additional actuarial assumptions described in subparagraph (B).

“(B) ADDITIONAL ACTUARIAL ASSUMPTIONS.—The actuarial assumptions described in this subparagraph are as follows:

“(i) All employees who are not otherwise assumed to retire as of the valuation date but who will be eligible to elect benefits during the plan year and the 7 succeeding plan years shall be assumed to retire at the earliest retirement date under the plan but not before the end of the plan year for which the at-risk target liability and at-risk target normal cost are being determined.

“(ii) All employees shall be assumed to elect the retirement benefit available under the plan at the assumed retirement age (determined after application of clause (i)) which would result in the highest present value of liabilities.

1           “(2) TARGET NORMAL COST OF AT-RISK  
2 PLANS.—In the case of a plan to which this sub-  
3 section applies for a plan year, the target normal  
4 cost of the plan for such plan year shall be equal to  
5 the present value of all benefits which are expected  
6 to accrue or be earned under the plan during the  
7 plan year, determined using the additional actuarial  
8 assumptions described in paragraph (1)(B).

9           “(3) MINIMUM AMOUNT.—In no event shall—  
10           “(A) the at-risk target liability be less than  
11 the target liability, as determined without re-  
12 gard to this subsection, or

13           “(B) the at-risk target normal cost be less  
14 than the target normal cost, as determined  
15 without regard to this subsection.

16           “(4) DETERMINATION OF AT-RISK STATUS.—  
17 For purposes of this subsection, a plan is in at-risk  
18 status for a plan year if—

19           “(A) the plan is maintained by a finan-  
20 cially-weak employer, and

21           “(B) the funding target attainment per-  
22 centage for the plan year is less than 93 per-  
23 cent.

24           “(5) FINANCIALLY-WEAK EMPLOYER.—

1           “(A) IN GENERAL.—For purposes of this  
2 subsection, the term ‘financially-weak employer’  
3 means any employer if—

4           “(i) as of the valuation date for each  
5 of the years during a period of at least 3  
6 consecutive plan years ending with the  
7 plan year—

8           “(I) the employer has an out-  
9 standing senior unsecured debt instru-  
10 ment which is rated lower than invest-  
11 ment grade by each of the nationally  
12 recognized statistical rating organiza-  
13 tions for corporate bonds that has  
14 issued a credit rating for such instru-  
15 ment, or

16           “(II) if no such debt instrument  
17 has been rated by such an organiza-  
18 tion but 1 or more of such organiza-  
19 tions has made an issuer credit rating  
20 for such employer, all such organiza-  
21 tions which have so rated the em-  
22 ployer have rated such employer lower  
23 than investment grade, and

24           “(ii) at least 2 of the years during  
25 such period are deterioration years.

1 If an employer is treated as a financially-weak  
 2 employer for any plan year, clause (ii) shall not  
 3 apply in determining whether the employer is so  
 4 treated for any succeeding plan year in any  
 5 continuous period of plan years for which the  
 6 employer is treated as a financially-weak em-  
 7 ployer.

8 “(B) CONTROLLED GROUP EXCEPTION.—

9 If an employer treated as a financially-weak  
 10 employer under subparagraph (A) is a member  
 11 of a controlled group (as defined in section  
 12 302(d)(3)), the employer shall not be treated as  
 13 a financially-weak employer if a significant  
 14 member (as determined under regulations pre-  
 15 scribed by the Secretary of the Treasury) of  
 16 such group has an outstanding senior unse-  
 17 cured debt instrument that is rated as being in-  
 18 vestment grade by an organization described in  
 19 subparagraph (A).

20 “(C) EMPLOYERS WITH NO RATINGS.—

21 If—

22 “(i) an employer has no debt instru-  
 23 ment described in subparagraph (A)(i)  
 24 which was rated by an organization de-  
 25 scribed in such subparagraph, and

1                   “(ii) no such organization has made  
 2                   an issuer credit rating for such employer,  
 3                   then such employer shall only be treated as a  
 4                   financially-weak employer to the extent provided  
 5                   in regulations prescribed by the Secretary of  
 6                   the Treasury.

7                   “(6) DETERMINATION OF DETERIORATION  
 8                   YEAR.—For purposes of paragraph (5), the term  
 9                   ‘deterioration year’ means any year during the pe-  
 10                  riod described in paragraph (5)(A)(i) for which the  
 11                  rating described in subclause (I) or (II) of para-  
 12                  graph (5)(A)(i) by each organization is either—

13                   “(A) lower than the lowest rating of the  
 14                   employer by such organization for a preceding  
 15                   year in such period, or

16                   “(B) the lowest rating used by such orga-  
 17                   nization.

18                   “(7) YEARS BEFORE EFFECTIVE DATE.—For  
 19                   purposes of paragraphs (5) and (6), plan years be-  
 20                   ginning before 2007 shall not be taken into account.

21                   “(8) TRANSITION BETWEEN APPLICABLE FUND-  
 22                   ING TARGETS AND BETWEEN APPLICABLE TARGET  
 23                   NORMAL COSTS.—

24                   “(A) IN GENERAL.—In any case in which  
 25                   a plan which is in at-risk status for a plan year

has been in such status for a consecutive period of fewer than 5 plan years, the applicable amount of the funding target and of the target normal cost shall be, in lieu of the amount determined without regard to this paragraph, the sum of—

“(i) the amount determined under this section without regard to this subsection, plus

“(ii) the transition percentage for such plan year of the excess of the amount determined under this subsection (without regard to this paragraph) over the amount determined under this section without regard to this subsection.

“(B) IMPROVEMENT YEARS NOT TAKEN INTO ACCOUNT.—

“(i) IN GENERAL.—An improvement year shall not be taken into account in determining any consecutive period of plan years for purposes of subparagraph (A).

“(ii) APPLICATION OF SUBSECTION AFTER IMPROVEMENT YEAR ENDS.—Plan years immediately before and after an improvement year (or consecutive period of

1 improvement years) shall be treated as  
 2 consecutive for purposes of subparagraph  
 3 (A).

4 “(iii) IMPROVEMENT YEAR.—For pur-  
 5 poses of this subparagraph, the term ‘im-  
 6 provement year’ means any plan year for  
 7 which any rating described in subclause (I)  
 8 or (II) of paragraph (5)(A)(i) is higher  
 9 than such rating for the preceding plan  
 10 year.

11 “(C) TRANSITION PERCENTAGE.—For pur-  
 12 poses of subparagraph (A), the transition per-  
 13 centage shall be determined in accordance with  
 14 the following table:

<b>“If the consecutive number of years (including the plan year) the plan is in at-risk status is—</b>	<b>The transition percentage is—</b>
1 .....	20
2 .....	40
3 .....	60
4 .....	80.

15 “(D) YEARS BEFORE EFFECTIVE DATE.—  
 16 For purposes of this paragraph, plan years be-  
 17 ginning before 2007 shall not be taken into ac-  
 18 count.

19 “(9) PLANS TO WHICH SUBSECTION APPLIES.—

20 “(A) IN GENERAL.—Except as provided in  
 21 this paragraph, this subsection shall apply to

1 any plan to which this section applies and  
 2 which is in at-risk status for the plan year.

3 “(B) EXCEPTION FOR SMALL PLANS.—  
 4 This subsection shall not apply to a plan for a  
 5 plan year if the plan was described in sub-  
 6 section (g)(2)(B) for the preceding plan year,  
 7 determined by substituting ‘500’ for ‘100’.

8 “(C) EXCEPTION FOR PLANS MAINTAINED  
 9 BY CERTAIN COOPERATIVES.—This subsection  
 10 shall not apply to an eligible cooperative plan  
 11 described in subparagraph (D).

12 “(D) ELIGIBLE COOPERATIVE PLAN DE-  
 13 FINED.—For purposes of subparagraph (C), a  
 14 plan shall be treated as an eligible cooperative  
 15 plan for a plan year if the plan is maintained  
 16 by more than 1 employer and at least 85 per-  
 17 cent of the employers are—

18 “(i) rural cooperatives (as defined in  
 19 section 401(k)(7)(B) of the Internal Rev-  
 20 enue Code of 1986 without regard to  
 21 clause (iv) thereof), or

22 “(ii) organizations which are—

23 “(I) cooperative organizations de-  
 24 scribed in section 1381(a) of such  
 25 Code which are more than 50-percent



1 owned by agricultural producers or by  
 2 cooperatives owned by agricultural  
 3 producers, or

4 “(II) more than 50-percent  
 5 owned, or controlled by, one or more  
 6 cooperative organizations described in  
 7 subclause (I).

8 A plan shall also be treated as an eligible coop-  
 9 erative plan for any plan year for which it is de-  
 10 scribed in section 210(a) and is maintained by  
 11 a rural telephone cooperative association de-  
 12 scribed in section 3(40)(B)(v).

13 “(E) EXCEPTION FOR PLANS SECURED BY  
 14 THIRD PARTIES BOUND BY PBGC AGREE-  
 15 MENTS.—This subsection shall not apply to any  
 16 plan if—

17 “(i) a person other than the employer  
 18 obligated to contribute under the plan is,  
 19 under the terms of an agreement with the  
 20 Pension Benefit Guaranty Corporation, lia-  
 21 ble for any failure of the employer to meet  
 22 its obligation to pay any minimum required  
 23 contribution or termination liability with  
 24 respect to the plan; and

1                   “(ii) such person is not a financially-  
2                   weak employer under paragraph (5).

3           “(j) PAYMENT OF MINIMUM REQUIRED CONTRIBU-  
4 TIONS.—

5           “(1) IN GENERAL.—For purposes of this sec-  
6 tion, the due date for any payment of any minimum  
7 required contribution for any plan year shall be 8½  
8 months after the close of the plan year.

9           “(2) INTEREST.—Any payment required under  
10 paragraph (1) for a plan year made after the valu-  
11 ation date for such plan year shall be increased by  
12 interest for the period from the valuation date to the  
13 payment date, determined by using the effective rate  
14 of interest for the plan for such plan year.

15           “(3) ACCELERATED QUARTERLY CONTRIBUTION  
16 SCHEDULE FOR UNDERFUNDED PLANS.—

17           “(A) FAILURE TO TIMELY MAKE RE-  
18 QUIRED INSTALLMENT.—

19           “(i) IN GENERAL.—In the case of a  
20 plan to which this paragraph applies, the  
21 employer maintaining the plan shall make  
22 the required installments under this para-  
23 graph and if the employer fails to pay the  
24 full amount of a required installment for  
25 the plan year, then the amount of interest

1 charged under paragraph (2) on the under-  
 2 payment for the period of underpayment  
 3 shall be determined by using a rate of in-  
 4 terest equal to the rate otherwise used  
 5 under paragraph (2) plus 5 percentage  
 6 points.

7 “(ii) PLANS TO WHICH PARAGRAPH  
 8 APPLIES.—This paragraph applies to any  
 9 defined benefit plan to which this section  
 10 applies other than a plan which—

11 “(I) is a plan described in sub-  
 12 section (g)(2)(B)), or

13 “(II) had a funding shortfall of  
 14 \$1,000,000 or less for the preceding  
 15 plan year.

16 “(B) AMOUNT OF UNDERPAYMENT, PE-  
 17 RIOD OF UNDERPAYMENT.—For purposes of  
 18 subparagraph (A)—

19 “(i) AMOUNT.—The amount of the  
 20 underpayment shall be the excess of—

21 “(I) the required installment,  
 22 over

23 “(II) the amount (if any) of the  
 24 installment contributed to or under

1                   the plan on or before the due date for  
2                   the installment.

3                   “(ii) PERIOD OF UNDERPAYMENT.—

4                   The period for which any interest is  
5                   charged under this paragraph with respect  
6                   to any portion of the underpayment shall  
7                   run from the due date for the installment  
8                   to the date on which such portion is con-  
9                   tributed to or under the plan.

10                  “(iii) ORDER OF CREDITING CON-

11                  TRIBUTIONS.—For purposes of clause  
12                  (i)(II), contributions shall be credited  
13                  against unpaid required installments in the  
14                  order in which such installments are re-  
15                  quired to be paid.

16                  “(C) NUMBER OF REQUIRED INSTALL-

17                  MENTS; DUE DATES.—For purposes of this  
18                  paragraph—

19                  “(i) PAYABLE IN 4 INSTALLMENTS.—

20                  There shall be 4 required installments for  
21                  each plan year.

22                  “(ii) TIME FOR PAYMENT OF IN-

23                  STALLMENTS.—The due dates for required  
24                  installments are set forth in the following  
25                  table:

**In the case of the following required installment:**

	<b>The due date is:</b>
1st .....	April 15
2nd .....	July 15
3rd .....	October 15
4th .....	January 15 of the following year.

1                   “(D) AMOUNT OF REQUIRED INSTALL-  
2                   MENT.—For purposes of this paragraph—

3                   “(i) IN GENERAL.—The amount of  
4                   any required installment shall be 25 per-  
5                   cent of the required annual payment.

6                   “(ii) REQUIRED ANNUAL PAYMENT.—  
7                   For purposes of clause (i), the term ‘re-  
8                   quired annual payment’ means the lesser  
9                   of—

10                   “(I) 90 percent of the minimum  
11                   required contribution (without regard  
12                   to any waiver under section 302(c)) to  
13                   the plan for the plan year under this  
14                   section, or

15                   “(II) in the case of a plan year  
16                   beginning after 2007, 100 percent of  
17                   the minimum required contribution  
18                   (without regard to any waiver under  
19                   section 302(c)) to the plan for the  
20                   preceding plan year.

1 Subclause (II) shall not apply if the pre-  
 2 ceding plan year referred to in such clause  
 3 was not a year of 12 months.

4 “(E) FISCAL YEARS AND SHORT YEARS.—

5 “(i) FISCAL YEARS.—In applying this  
 6 paragraph to a plan year beginning on any  
 7 date other than January 1, there shall be  
 8 substituted for the months specified in this  
 9 paragraph, the months which correspond  
 10 thereto.

11 “(ii) SHORT PLAN YEAR.—This sub-  
 12 paragraph shall be applied to plan years of  
 13 less than 12 months in accordance with  
 14 regulations prescribed by the Secretary of  
 15 the Treasury.

16 “(4) LIQUIDITY REQUIREMENT IN CONNECTION  
 17 WITH QUARTERLY CONTRIBUTIONS.—

18 “(A) IN GENERAL.—A plan to which this  
 19 paragraph applies shall be treated as failing to  
 20 pay the full amount of any required installment  
 21 under paragraph (3) to the extent that the  
 22 value of the liquid assets paid in such install-  
 23 ment is less than the liquidity shortfall (wheth-  
 24 er or not such liquidity shortfall exceeds the

1 amount of such installment required to be paid  
2 but for this paragraph).

3 “(B) PLANS TO WHICH PARAGRAPH AP-  
4 PLIES.—This paragraph shall apply to a plan  
5 which—

6 “(i) is required to pay installments  
7 under paragraph (3) for a plan year, and

8 “(ii) has a liquidity shortfall for any  
9 quarter during such plan year.

10 “(C) PERIOD OF UNDERPAYMENT.—For  
11 purposes of paragraph (3)(A), any portion of an  
12 installment that is treated as not paid under  
13 subparagraph (A) shall continue to be treated  
14 as unpaid until the close of the quarter in  
15 which the due date for such installment occurs.

16 “(D) LIMITATION ON INCREASE.—If the  
17 amount of any required installment is increased  
18 by reason of subparagraph (A), in no event  
19 shall such increase exceed the amount which,  
20 when added to prior installments for the plan  
21 year, is necessary to increase the funding target  
22 attainment percentage of the plan for the plan  
23 year (taking into account the expected increase  
24 in funding target due to benefits accruing or  
25 earned during the plan year) to 100 percent.

1                   “(E) DEFINITIONS.—For purposes of this  
2                   subparagraph:

3                   “(i) LIQUIDITY SHORTFALL.—The  
4                   term ‘liquidity shortfall’ means, with re-  
5                   spect to any required installment, an  
6                   amount equal to the excess (as of the last  
7                   day of the quarter for which such install-  
8                   ment is made) of—

9                   “(I) the base amount with re-  
10                  spect to such quarter, over

11                  “(II) the value (as of such last  
12                  day) of the plan’s liquid assets.

13                  “(ii) BASE AMOUNT.—

14                  “(I) IN GENERAL.—The term  
15                  ‘base amount’ means, with respect to  
16                  any quarter, an amount equal to 3  
17                  times the sum of the adjusted dis-  
18                  bursements from the plan for the 12  
19                  months ending on the last day of such  
20                  quarter.

21                  “(II) SPECIAL RULE.—If the  
22                  amount determined under subclause  
23                  (I) exceeds an amount equal to 2  
24                  times the sum of the adjusted dis-  
25                  bursements from the plan for the 36



1 months ending on the last day of the  
 2 quarter and an enrolled actuary cer-  
 3 tifies to the satisfaction of the Sec-  
 4 retary of the Treasury that such ex-  
 5 cess is the result of nonrecurring cir-  
 6 cumstances, the base amount with re-  
 7 spect to such quarter shall be deter-  
 8 mined without regard to amounts re-  
 9 lated to those nonrecurring cir-  
 10 cumstances.

11 “(iii) DISBURSEMENTS FROM THE  
 12 PLAN.—The term ‘disbursements from the  
 13 plan’ means all disbursements from the  
 14 trust, including purchases of annuities,  
 15 payments of single sums and other bene-  
 16 fits, and administrative expenses.

17 “(iv) ADJUSTED DISBURSEMENTS.—  
 18 The term ‘adjusted disbursements’ means  
 19 disbursements from the plan reduced by  
 20 the product of—

21 “(I) the plan’s funding target at-  
 22 tainment percentage for the plan year,  
 23 and

24 “(II) the sum of the purchases of  
 25 annuities, payments of single sums,

1                   and such other disbursements as the  
 2                   Secretary of the Treasury shall pro-  
 3                   vide in regulations.

4                   “(v) LIQUID ASSETS.—The term ‘liq-  
 5                   uid assets’ means cash, marketable securi-  
 6                   ties, and such other assets as specified by  
 7                   the Secretary of the Treasury in regula-  
 8                   tions.

9                   “(vi) QUARTER.—The term ‘quarter’  
 10                  means, with respect to any required install-  
 11                  ment, the 3-month period preceding the  
 12                  month in which the due date for such in-  
 13                  stallment occurs.

14                  “(F) REGULATIONS.—The Secretary of the  
 15                  Treasury may prescribe such regulations as are  
 16                  necessary to carry out this paragraph.

17                  “(k) IMPOSITION OF LIEN WHERE FAILURE TO  
 18                  MAKE REQUIRED CONTRIBUTIONS.—

19                  “(1) IN GENERAL.—In the case of a plan to  
 20                  which this subsection applies, if—

21                         “(A) any person fails to make a contribu-  
 22                         tion payment required by section 302 and this  
 23                         section before the due date for such payment,  
 24                         and

1           “(B) the unpaid balance of such payment  
 2           (including interest), when added to the aggre-  
 3           gate unpaid balance of all preceding such pay-  
 4           ments for which payment was not made before  
 5           the due date (including interest), exceeds  
 6           \$1,000,000,

7           then there shall be a lien in favor of the plan in the  
 8           amount determined under paragraph (3) upon all  
 9           property and rights to property, whether real or per-  
 10          sonal, belonging to such person and any other per-  
 11          son who is a member of the same controlled group  
 12          of which such person is a member.

13           “(2) PLANS TO WHICH SUBSECTION APPLIES.—  
 14          This subsection shall apply to a defined benefit plan  
 15          which is a single-employer plan covered under sec-  
 16          tion 4021 for any plan year for which the funding  
 17          target attainment percentage (as defined in sub-  
 18          section (d)(2)) of such plan is less than 100 percent.

19           “(3) AMOUNT OF LIEN.—For purposes of para-  
 20          graph (1), the amount of the lien shall be equal to  
 21          the aggregate unpaid balance of contribution pay-  
 22          ments required under this section and section 302  
 23          for which payment has not been made before the due  
 24          date.

25           “(4) NOTICE OF FAILURE; LIEN.—

1           “(A) NOTICE OF FAILURE.—A person  
 2           committing a failure described in paragraph (1)  
 3           shall notify the Pension Benefit Guaranty Cor-  
 4           poration of such failure within 10 days of the  
 5           due date for the required contribution payment.

6           “(B) PERIOD OF LIEN.—The lien imposed  
 7           by paragraph (1) shall arise on the due date for  
 8           the required contribution payment and shall  
 9           continue until the last day of the first plan year  
 10          in which the plan ceases to be described in  
 11          paragraph (1)(B). Such lien shall continue to  
 12          run without regard to whether such plan con-  
 13          tinues to be described in paragraph (2) during  
 14          the period referred to in the preceding sentence.

15          “(C) CERTAIN RULES TO APPLY.—Any  
 16          amount with respect to which a lien is imposed  
 17          under paragraph (1) shall be treated as taxes  
 18          due and owing the United States and rules  
 19          similar to the rules of subsections (c), (d), and  
 20          (e) of section 4068 shall apply with respect to  
 21          a lien imposed by subsection (a) and the  
 22          amount with respect to such lien.

23          “(5) ENFORCEMENT.—Any lien created under  
 24          paragraph (1) may be perfected and enforced only  
 25          by the Pension Benefit Guaranty Corporation, or at

1 the direction of the Pension Benefit Guaranty Cor-  
 2 poration, by the contributing sponsor (or any mem-  
 3 ber of the controlled group of the contributing spon-  
 4 sor).

5 “(6) DEFINITIONS.—For purposes of this  
 6 subsection—

7 “(A) CONTRIBUTION PAYMENT.—The term  
 8 ‘contribution payment’ means, in connection  
 9 with a plan, a contribution payment required to  
 10 be made to the plan, including any required in-  
 11 stallment under paragraphs (3) and (4) of sub-  
 12 section (j).

13 “(B) DUE DATE; REQUIRED INSTALL-  
 14 MENT.—The terms ‘due date’ and ‘required in-  
 15 stallment’ have the meanings given such terms  
 16 by subsection (j), except that in the case of a  
 17 payment other than a required installment, the  
 18 due date shall be the date such payment is re-  
 19 quired to be made under section 303.

20 “(C) CONTROLLED GROUP.—The term  
 21 ‘controlled group’ means any group treated as  
 22 a single employer under subsections (b), (c),  
 23 (m), and (o) of section 414 of the Internal Rev-  
 24 enue Code of 1986.

1       “(l) QUALIFIED TRANSFERS TO HEALTH BENEFIT  
2 ACCOUNTS.—In the case of a qualified transfer (as de-  
3 fined in section 420 of the Internal Revenue Code of  
4 1986), any assets so transferred shall not, for purposes  
5 of this section, be treated as assets in the plan.”.

6       (b) CLERICAL AMENDMENT.—The table of sections  
7 in section 1 of such Act (as amended by section 101) is  
8 amended by inserting after the item relating to section  
9 302 the following new item:

“Sec. 303. Minimum funding standards for single-employer defined benefit  
pension plans.”.

10       (c) EFFECTIVE DATE.—The amendments made by  
11 this section shall apply with respect to plan years begin-  
12 ning after 2006.

13 **SEC. 103. BENEFIT LIMITATIONS UNDER SINGLE-EM-**  
14 **PLOYER PLANS.**

15       (a) LIMITS ON BENEFITS AND BENEFIT ACCRU-  
16 ALS.—

17           (1) IN GENERAL.—Section 206 of such Act is  
18 amended by adding at the end the following new  
19 subsection:

20       “(g) FUNDING-BASED LIMITS ON BENEFITS AND  
21 BENEFIT ACCRUALS UNDER SINGLE-EMPLOYER  
22 PLANS.—

23           “(1) LIMITATIONS ON PLAN AMENDMENTS IN-  
24 CREASING LIABILITY FOR BENEFITS.—

1           “(A) IN GENERAL.—Except as provided in  
 2           paragraph (4), no amendment to a single-em-  
 3           ployer plan which has the effect of increasing li-  
 4           abilities of the plan by reason of increases in  
 5           benefits, establishment of new benefits, chang-  
 6           ing the rate of benefit accrual, or changing the  
 7           rate at which benefits become nonforfeitable  
 8           may take effect during any plan year if the ad-  
 9           justed funding target attainment percentage as  
 10          of the valuation date of the plan for such plan  
 11          year is—

12                       “(i) less than 80 percent, or

13                       “(ii) would be less than 80 percent  
 14                       taking into account such amendment.

15           “(B) EXEMPTION.—Subparagraph (A)  
 16           shall cease to apply with respect to any plan  
 17           year, effective as of the first date of the plan  
 18           year (or if later, the effective date of the  
 19           amendment), upon payment by the plan sponsor  
 20           of a contribution (in addition to any minimum  
 21           required contribution under section 303) equal  
 22           to—

23                       “(i) in the case of subparagraph  
 24                       (A)(i), the amount of the increase in the  
 25                       funding target of the plan (under section

1           303) for the plan year attributable to the  
2           amendment, and

3           “(ii) in the case of subparagraph  
4           (A)(ii), the amount sufficient to result in  
5           an adjusted funding target attainment per-  
6           centage of 80 percent.

7           “(C) EXCEPTION FOR CERTAIN BENEFIT  
8           INCREASES.—Subparagraph (A) shall not apply  
9           to any amendment which provides for an in-  
10          crease in benefits under a formula which is not  
11          based on a participant’s compensation, but only  
12          if the rate of such increase is not in excess of  
13          the contemporaneous rate of increase in average  
14          wages of participants covered by the amend-  
15          ment.

16          “(2) LIMITATIONS ON ACCELERATED BENEFIT  
17          DISTRIBUTIONS.—

18                 “(A) IN GENERAL.—A defined benefit plan  
19                 which is a single-employer plan shall provide  
20                 that, with respect to any plan year—

21                         “(i) if the plan’s adjusted funded tar-  
22                         get liability percentage as of the valuation  
23                         date for the preceding plan year was less  
24                         than 60 percent and the preceding plan  
25                         year is not otherwise in a prohibited pe-



riod, the plan sponsor shall, in addition to any other contribution required under section 303, contribute for the current plan year and each succeeding plan year in the prohibited period with respect to the current plan year the amount (if any) which, when added to the portion of the minimum required contribution for the plan year described in subparagraphs (B) and (C) of section 303(a)(1), is sufficient to result in an adjusted funded target liability percentage for the plan year of 60 percent, and

“(ii) no prohibited payments will be made during a prohibited period.

“(B) PROHIBITED PAYMENT.—For purpose of this subsection—

“(i) IN GENERAL.—The term ‘prohibited payment’ means—

“(I) any payment, in excess of the monthly amount paid under a single life annuity (plus any social security supplements described in the last sentence of section 204(b)(1)(G)), to a participant or beneficiary whose annuity starting date (as defined in sec-

1           tion 205(h)(2)) occurs during a pro-  
 2           hibited period,

3           “(II) any payment for the pur-  
 4           chase of an irrevocable commitment  
 5           from an insurer to pay benefits, and

6           “(III) any other payment speci-  
 7           fied by the Secretary of the Treasury  
 8           by regulations.

9           “(ii) EXCEPTION FOR CERTAIN PAY-  
 10          MENTS.—In the case of any prohibited pe-  
 11          riod described in subparagraph (C)(i), the  
 12          term ‘prohibited payment’ shall not include  
 13          any payment if the amount of the payment  
 14          does not exceed the lesser of—

15               “(I) 50 percent of the amount of  
 16               the payment which could be made  
 17               without regard to this subsection, or

18               “(II) the present value (deter-  
 19               mined under guidance prescribed by  
 20               the Pension Benefit Guaranty Cor-  
 21               poration, using the interest and mor-  
 22               tality assumptions under section  
 23               205(g)) of the maximum guarantee  
 24               with respect to the participant under  
 25               section 4022.

1           The exception under this clause shall only  
 2           apply once with respect to any participant,  
 3           except that, for purposes of this sentence,  
 4           a participant and any beneficiary on his  
 5           behalf (including an alternate payee, as de-  
 6           fined in section 206(d)(3)(K)) shall be  
 7           treated as 1 participant. If the accrued  
 8           benefit of a participant is allocated to such  
 9           an alternate payee and 1 or more other  
 10          persons, the amount under subclause (II)  
 11          shall be allocated among such persons in  
 12          the same manner as the accrued benefit is  
 13          allocated unless the qualified domestic rela-  
 14          tions order (as defined in section  
 15          206(d)(3)(B)(i)) provides otherwise.

16           “(C) PROHIBITED PERIOD.—For purposes  
 17          of subparagraph (A), the term ‘prohibited pe-  
 18          riod’ means—

19           “(i) except as provided in subpara-  
 20          graph (D), if a plan sponsor is required to  
 21          make the contribution for the current plan  
 22          year under subparagraph (A), the period  
 23          beginning on the 1st day of the plan year  
 24          and ending on the last day of the 1st pe-  
 25          riod of 2 consecutive plan years (beginning

on or after such 1st day) for which the plan's adjusted funded target liability percentage was at least 60 percent,

“(ii) any period the plan sponsor is in bankruptcy, or

“(iii) any period during which the plan has a liquidity shortfall (as defined in section 303(j)(4)(E)(i)).

The prohibited period for purposes of clause (ii) shall not include any portion of a plan year (even if the plan sponsor is in bankruptcy during such period) which occurs on or after the date the plan's enrolled actuary certifies that, as of the valuation date for the plan year, the plan's adjusted funded target liability percentage is at least 100 percent.

“(D) SATISFACTION OF REQUIREMENT BEFORE CLOSE OF PLAN YEAR.—If, before the close of the current plan year—

“(i) the plan sponsor makes the contribution required to be made under subparagraph (A), or

“(ii) the plan's enrolled actuary certifies that, as of the valuation date for the plan year, the adjusted funded target li-

1           ability percentage of the plan is at least 60  
 2           percent,  
 3           this paragraph shall be applied as if no prohib-  
 4           ited period had begun as of the beginning of  
 5           such year and the plan shall, under rules de-  
 6           scribed by the Secretary of the Treasury, re-  
 7           store any payments not made during the pro-  
 8           hibited period in effect before the application of  
 9           this paragraph.

10           “(3) LIMITATION ON BENEFIT ACCRUALS FOR  
 11           PLANS WITH SEVERE FUNDING SHORTFALLS.—

12           “(A) IN GENERAL.—Except as provided in  
 13           paragraph (4), a single-employer plan shall pro-  
 14           vide that all future benefit accruals under the  
 15           plan shall cease during a severe funding short-  
 16           fall period, but only to the extent the cessation  
 17           of such accruals would have been permitted  
 18           under section 204(g) if the cessation had been  
 19           implemented by a plan amendment adopted im-  
 20           mediately before the severe funding shortfall pe-  
 21           riod.

22           “(B) SEVERE FUNDING SHORTFALL PE-  
 23           RIOD.—For purposes of subparagraph (A), the  
 24           term ‘severe funding shortfall period’ means in  
 25           the case of a plan the adjusted funding target

1           attainment percentage of which as of the valu-  
 2           ation date of the plan for any plan year is less  
 3           than 60 percent, the period—

4                   “(i) beginning on the 1st day of the  
 5                   succeeding plan year, and

6                   “(ii) ending on the date the plan’s en-  
 7                   rolled actuary certifies that the plan’s ad-  
 8                   justed funding target attainment percent-  
 9                   age is at least 60 percent, and

10                   “(C)   OPPORTUNITY   FOR   INCREASED  
 11           FUNDING.—For purposes of subparagraph (B),  
 12           a plan shall not be treated as described in such  
 13           subparagraph for a plan year if the plan’s en-  
 14           rolled actuary certifies that the plan sponsor  
 15           has before the end of the plan year contributed  
 16           (in addition to any minimum required contribu-  
 17           tion under section 303) the amount sufficient to  
 18           result in an adjusted funding target attainment  
 19           percentage as of the valuation date for the plan  
 20           year of 60 percent.

21                   “(4) EXCEPTION FOR CERTAIN COLLECTIVELY  
 22           BARGAINED BENEFITS.—In the case of a plan main-  
 23           tained pursuant to a collective bargaining agreement  
 24           between employee representatives and the plan spon-  
 25           sor and in effect before the beginning of the first

1 day on which a limitation would otherwise apply  
 2 under paragraph (1), (2), or (3)—

3 “(A) such limitations shall not apply to  
 4 any amendment, prohibited payment, or accrual  
 5 with respect to such plan, but

6 “(B) the plan sponsor shall contribute (in  
 7 addition to any minimum required contribution  
 8 under section 303) the amount sufficient to re-  
 9 sult in an adjusted funding target attainment  
 10 percentage (as of the valuation date for the  
 11 plan year in which any such limitation would  
 12 otherwise apply) equal to the percentage nec-  
 13 essary to prevent the limitation from applying.

14 “(5) RULES RELATING TO REQUIRED CON-  
 15 TRIBUTIONS.—

16 “(A) SECURITY MAY BE PROVIDED.—

17 “(i) IN GENERAL.—For purposes of  
 18 this subsection, the adjusted funding tar-  
 19 get attainment percentage shall be deter-  
 20 mined by treating as an asset of the plan  
 21 any security provided by a plan sponsor in  
 22 a form meeting the requirements of clause  
 23 (ii).

1 “(ii) FORM OF SECURITY.—The secu-  
 2 rity required under clause (i) shall consist  
 3 of—

4 “(I) a bond issued by a corporate  
 5 surety company that is an acceptable  
 6 surety for purposes of section 412 of  
 7 this Act,

8 “(II) cash, or United States obli-  
 9 gations which mature in 3 years or  
 10 less, held in escrow by a bank or simi-  
 11 lar financial institution, or

12 “(III) such other form of security  
 13 as is satisfactory to the Secretary of  
 14 the Treasury and the parties involved.

15 “(iii) ENFORCEMENT.—Any security  
 16 provided under clause (i) may be perfected  
 17 and enforced at any time after the earlier  
 18 of—

19 “(I) the date on which the plan  
 20 terminates,

21 “(II) if there is a failure to make  
 22 a payment of the minimum required  
 23 contribution for any plan year begin-  
 24 ning after the security is provided, the



1 due date for the payment under sec-  
 2 tion 303(j), or

3 “(III) if the adjusted funding  
 4 target attainment percentage is less  
 5 than 60 percent for a consecutive pe-  
 6 riod of 7 years, the valuation date for  
 7 the last year in the period.

8 “(iv) RELEASE OF SECURITY.—The  
 9 security shall be released (and any  
 10 amounts thereunder shall be refunded to-  
 11 gether with any interest accrued thereon)  
 12 at such time as the Secretary of the Treas-  
 13 ury may prescribe in regulations, including  
 14 regulations for partial releases of the secu-  
 15 rity by reason of increases in the funding  
 16 target attainment percentage.

17 “(B) PREFUNDING BALANCE MAY NOT BE  
 18 USED.—No prefunding balance under section  
 19 303(f) may be used to satisfy any required con-  
 20 tribution under this subsection.

21 “(C) TREATMENT AS UNPAID MINIMUM  
 22 REQUIRED CONTRIBUTION.—The amount of any  
 23 required contribution which a plan sponsor fails  
 24 to make under paragraph (1) or (3) for any  
 25 plan year shall be treated as an unpaid min-

1           imum required contribution for purposes of sub-  
 2           section (j) and (k) of section 303 and for pur-  
 3           poses of section 4971 of the Internal Revenue  
 4           Code of 1986.

5           “(6) NEW PLANS.—Paragraphs (1) and (3)  
 6           shall not apply to a plan for the first 5 plan years  
 7           of the plan. For purposes of this paragraph, the ref-  
 8           erence in this paragraph to a plan shall include a  
 9           reference to any predecessor plan.

10          “(7) PRESUMED UNDERFUNDING FOR PUR-  
 11          POSES OF BENEFIT LIMITATIONS BASED ON PRIOR  
 12          YEAR’S FUNDING STATUS.—

13               “(A) PRESUMPTION OF CONTINUED  
 14               UNDERFUNDING.—In any case in which a ben-  
 15               efit limitation under paragraph (1), (2), or (3)  
 16               has been applied to a plan with respect to the  
 17               plan year preceding the current plan year, the  
 18               adjusted funding target attainment percentage  
 19               of the plan as of the valuation date of the plan  
 20               for the current plan year shall be presumed to  
 21               be equal to the adjusted funding target attain-  
 22               ment percentage of the plan as of the valuation  
 23               date of the plan for the preceding plan year  
 24               until the enrolled actuary of the plan certifies  
 25               the actual adjusted funding target attainment

1 percentage of the plan as of the valuation date  
 2 of the plan for the current plan year.

3 “(B) PRESUMPTION OF UNDERFUNDING  
 4 AFTER 10TH MONTH.—In any case in which no  
 5 such certification is made with respect to the  
 6 plan before the first day of the 10th month of  
 7 the current plan year, for purposes of para-  
 8 graphs (1), (2), and (3), the plan’s adjusted  
 9 funding target attainment percentage shall be  
 10 conclusively presumed to be less than 60 per-  
 11 cent as of the first day of such 10th month.

12 “(8) TREATMENT OF PLAN AS OF CLOSE OF  
 13 PROHIBITED OR CESSATION PERIOD.—For purposes  
 14 of applying this part—

15 “(A) OPERATION OF PLAN AFTER PE-  
 16 RIOD.—Unless the plan provides otherwise, pay-  
 17 ments and accruals will resume effective as of  
 18 the day following the close of a period of limita-  
 19 tion of payment or accrual of benefits under  
 20 paragraph (2) or (3).

21 “(B) TREATMENT OF AFFECTED BENE-  
 22 FITS.—Nothing in this paragraph shall be con-  
 23 strued as affecting the plan’s treatment of ben-  
 24 efits which would have been paid or accrued but  
 25 for this subsection.

1           “(9) FUNDING TARGET ATTAINMENT PERCENT-  
2           AGE.—For purposes of this subsection—

3                   “(A) IN GENERAL.—The term ‘funding  
4           target attainment percentage’ has the same  
5           meaning given such term by section 303(d)(2).

6                   “(B) ADJUSTED FUNDED TARGET LIABIL-  
7           ITY PERCENTAGE.—The term ‘adjusted funded  
8           target liability percentage’ means the funded  
9           target liability percentage which is determined  
10          under subparagraph (A) by increasing each of  
11          the amounts under subparagraphs (A) and (B)  
12          of section 303(d)(2) by the aggregate amount  
13          of purchases of annuities, payments of single  
14          sums, and such other disbursements as the Sec-  
15          retary of the Treasury shall prescribe in regula-  
16          tions, which were made by the plan during the  
17          preceding 2 plan years.

18                  “(10) YEARS BEFORE EFFECTIVE DATE.—No  
19          plan year beginning before 2007 shall be taken into  
20          account in determining whether this subsection ap-  
21          plies to any plan year beginning after 2006.”.

22                  (2) NOTICE REQUIREMENT.—

23                   (A) IN GENERAL.—Section 101 of such  
24          Act (29 U.S.C. 1021) is amended—

1 (i) by redesignating subsection (j) as  
2 subsection (k); and

3 (ii) by inserting after subsection (i)  
4 the following new subsection:

5 “(j) NOTICE OF FUNDING-BASED LIMITATION ON  
6 CERTAIN FORMS OF DISTRIBUTION.—The plan adminis-  
7 trator of a single-employer plan shall provide a written no-  
8 tice to plan participants and beneficiaries within 30  
9 days—

10 “(1) after the plan has become subject to the  
11 restriction described in section 206(g)(2),

12 “(2) in the case of a plan to which section  
13 206(g)(3) applies, after—

14 “(A) the date in the plan year described in  
15 section 206(g)(3)(B) on which the plan’s en-  
16 rolled actuary certifies that the plan’s adjusted  
17 funding target attainment percentage for the  
18 plan year is less than 60 percent (or, if earlier,  
19 the date such percentage is deemed to be less  
20 than 60 percent under section 206(g)(7)), and

21 “(B) the first day of the severe funding  
22 shortfall period, and

23 “(3) at such other time as may be determined  
24 by the Secretary of the Treasury.

1 The notice required to be provided under this subsection  
 2 shall be in writing, except that such notice may be in elec-  
 3 tronic or other form to the extent that such form is rea-  
 4 sonably accessible to the recipient.”.

5 (B) ENFORCEMENT.—Section 502(c)(4) of  
 6 such Act (29 U.S.C. 1132(c)(4)) is amended by  
 7 striking “section 302(b)(7)(F)(iv)” and insert-  
 8 ing “sections 101(j) and 302(b)(7)(F)(iv)”.

9 (b) EFFECTIVE DATES.—

10 (1) IN GENERAL.—The amendments made by  
 11 this section shall apply to plan years beginning after  
 12 December 31, 2006.

13 (2) COLLECTIVE BARGAINING EXCEPTION.—In  
 14 the case of a plan maintained pursuant to 1 or more  
 15 collective bargaining agreements between employee  
 16 representatives and 1 or more employers ratified be-  
 17 fore January 1, 2007, the amendments made by this  
 18 section shall not apply to plan years beginning be-  
 19 fore the earlier of—

20 (A) the later of—

21 (i) the date on which the last collec-  
 22 tive bargaining agreement relating to the  
 23 plan terminates (determined without re-  
 24 gard to any extension thereof agreed to

1 after the date of the enactment of this  
2 Act), or

3 (ii) the first day of the first plan year  
4 to which the amendments made by this  
5 subsection would (but for this subpara-  
6 graph) apply, or

7 (B) January 1, 2010.

8 For purposes of subparagraph (A)(i), any plan  
9 amendment made pursuant to a collective bargaining  
10 agreement relating to the plan which amends the  
11 plan solely to conform to any requirement added by  
12 this section shall not be treated as a termination of  
13 such collective bargaining agreement.

14 **SEC. 104. TECHNICAL AND CONFORMING AMENDMENTS.**

15 (a) MISCELLANEOUS AMENDMENTS TO TITLE I.—  
16 Subtitle B of title I of such Act (29 U.S.C. 1021 et seq.)  
17 is amended—

18 (1) in section 101(d)(3), by striking “section  
19 302(e)” and inserting “section 303(j)”;

20 (2) in section 103(d)(8)(B), by striking “the re-  
21 quirements of section 302(c)(3)” and inserting “the  
22 applicable requirements of sections 303(h) and  
23 304(c)(3)”;

24 (3) in section 103(d), by striking paragraph  
25 (11) and inserting the following:

1           “(11) If the current value of the assets of the  
2           plan is less than 70 percent of—

3                   “(A) in the case of a single-employer plan,  
4                   the funding target (as defined in section  
5                   303(d)(1)) of the plan, or

6                   “(B) in the case of a multiemployer plan,  
7                   the current liability (as defined in section  
8                   304(c)(6)(D)) under the plan,  
9           the percentage which such value is of the amount  
10          described in subparagraph (A) or (B).”;

11           (4) in section 203(a)(3)(C), by striking “section  
12           302(c)(8)” and inserting “section 302(d)(2)”;

13           (5) in section 204(g)(1), by striking “section  
14           302(c)(8)” and inserting “section 302(d)(2)”;

15           (6) in section 204(i)(2)(B), by striking “section  
16           302(c)(8)” and inserting “section 302(d)(2)”;

17           (7) in section 204(i)(3), by striking “funded  
18           current liability percentage (within the meaning of  
19           section 302(d)(8) of this Act)” and inserting “fund-  
20           ing target attainment percentage (as defined in sec-  
21           tion 303(d)(2))”;

22           (8) in section 204(i)(4), by striking “section  
23           302(c)(11)(A), without regard to section  
24           302(c)(11)(B)” and inserting “section 302(b)(1),  
25           without regard to section 302(b)(2)”;



1 (9) in section 206(e)(1), by striking “section  
 2 302(d)” and inserting “section 303(j)(4)”, and by  
 3 striking “section 302(e)(5)” and inserting “section  
 4 303(j)(4)(E)(i)”;

5 (10) in section 206(e)(3), by striking “section  
 6 302(e) by reason of paragraph (5)(A) thereof” and  
 7 inserting “section 303(j)(3) by reason of section  
 8 303(j)(4)(A)”;

9 (11) in sections 101(e)(3), 403(c)(1), and  
 10 408(b)(13), by striking “American Jobs Creation  
 11 Act of 2004” and inserting “Pension Security and  
 12 Transparency Act of 2005”.

13 (b) MISCELLANEOUS AMENDMENTS TO TITLE IV.—  
 14 Title IV of such Act is amended—

15 (1) in section 4001(a)(13) (29 U.S.C.  
 16 1301(a)(13)), by striking “302(c)(11)(A)” and in-  
 17 serting “302(b)(1)”, by striking “412(c)(11)(A)”  
 18 and inserting “412(c)(1)”, by striking  
 19 “302(c)(11)(B)” and inserting “302(b)(2)”, and by  
 20 striking “412(c)(11)(B)” and inserting “412(c)(2)”;

21 (2) in section 4003(e)(1) (29 U.S.C.  
 22 1303(e)(1)), by striking “302(f)(1)(A) and (B)” and  
 23 inserting “303(k)(1)(A) and (B)”, and by striking  
 24 “412(n)(1)(A) and (B)” and inserting  
 25 “430(k)(1)(A) and (B)”;

1           (3) in section 4010(b)(2) (29 U.S.C.  
 2   1310(b)(2)), by striking “302(f)(1)(A) and (B)” and  
 3   inserting “303(k)(1)(A) and (B)”, and by striking  
 4   “412(n)(1)(A) and (B)” and inserting  
 5   “430(k)(1)(A) and (B)”;

6           (4) in section 4062(c)(1) (29 U.S.C.  
 7   1362(c)(1)), by striking paragraphs (1), (2), and (3)  
 8   and inserting the following:

9           “(1)(A) in the case of a single-employer plan,  
 10   the sum of the shortfall amortization charge (within  
 11   the meaning of section 303(c)(1) of this Act and  
 12   430(d)(1) of the Internal Revenue Code of 1986)  
 13   with respect to the plan (if any) for the plan year  
 14   in which the termination date occurs, plus the aggre-  
 15   gate total of shortfall amortization installments (if  
 16   any) determined for succeeding plan years under  
 17   section 303(c)(2) of this Act and section 430(d)(2)  
 18   of such Code (which, for purposes of this subpara-  
 19   graph, shall include any increase in such sum which  
 20   would result if all applications for waivers of the  
 21   minimum funding standard under section 302(c) of  
 22   this Act and section 412(d) of such Code which are  
 23   pending with respect to such plan were denied and  
 24   if no additional contributions (other than those al-  
 25   ready made by the termination date) were made for

1 the plan year in which the termination date occurs  
2 or for any previous plan year), or

3 “(B) in the case of a multiemployer plan, the  
4 outstanding balance of the accumulated funding de-  
5 ficiencies (within the meaning of section 304(a)(2)  
6 of this Act and section 431(a) of the Internal Rev-  
7 enue Code of 1986) of the plan (if any) (which, for  
8 purposes of this subparagraph, shall include the  
9 amount of any increase in such accumulated funding  
10 deficiencies of the plan which would result if all  
11 pending applications for waivers of the minimum  
12 funding standard under section 302(c) of this Act or  
13 section 412(d) of such Code and for extensions of  
14 the amortization period under section 304(d) of this  
15 Act or section 431(d) of such Code with respect to  
16 such plan were denied and if no additional contribu-  
17 tions (other than those already made by the termi-  
18 nation date) were made for the plan year in which  
19 the termination date occurs or for any previous plan  
20 year),

21 “(2)(A) in the case of a single-employer plan,  
22 the sum of the waiver amortization charge (within  
23 the meaning of section 303(e)(1) of this Act and  
24 430(e)(2) of the Internal Revenue Code of 1986)  
25 with respect to the plan (if any) for the plan year

1 in which the termination date occurs, plus the aggregate  
 2 total of waiver amortization installments (if  
 3 any) determined for succeeding plan years under  
 4 section 303(e)(3) of this Act and section 430(e)(3)  
 5 of such Code, or

6 “(B) in the case of a multiemployer plan, the  
 7 outstanding balance of the amount of waived fund-  
 8 ing deficiencies of the plan waived before such date  
 9 under section 302(c) of this Act or section 412(d) of  
 10 such Code (if any), and

11 “(3) in the case of a multiemployer plan, the  
 12 outstanding balance of the amount of decreases in  
 13 the minimum funding standard allowed before such  
 14 date under section 304(d) of this Act or section  
 15 431(d) of such Code (if any);”;

16 (5) in section 4071 (29 U.S.C. 1371), by strik-  
 17 ing “302(f)(4)” and inserting “303(k)(4)”;

18 (6) in section 4243(a)(1)(B) (29 U.S.C.  
 19 1423(a)(1)(B)), by striking “302(a)” and inserting  
 20 “304(a)”, and, in clause (i), by striking “302(a)”  
 21 and inserting “304(a)”;

22 (7) in section 4243(f)(1) (29 U.S.C.  
 23 1423(f)(1)), by striking “303(a)” and inserting  
 24 “302(c)”;

1 (8) in section 4243(f)(2) (29 U.S.C.  
 2 1423(f)(2)), by striking “303(c)” and inserting  
 3 “302(c)(3)”; and

4 (9) in section 4243(g) (29 U.S.C. 1423(g)), by  
 5 striking “302(c)(3)” and inserting “304(c)(3)”.

6 (c) AMENDMENTS TO REORGANIZATION PLAN NO. 4  
 7 OF 1978.—Section 106(b)(ii) of Reorganization Plan No.  
 8 4 of 1978 (ratified and affirmed as law by Public Law  
 9 98–532 (98 Stat. 2705)) is amended by striking  
 10 “302(c)(8)” and inserting “302(d)(2)”, by striking  
 11 “304(a) and (b)(2)(A)” and inserting “304(d)(1), (d)(2),  
 12 and (e)(2)(A)”, and by striking “412(c)(8), (e), and  
 13 (f)(2)(A)” and inserting “412(d)(2) and 431(d)(1), (d)(2),  
 14 and (e)(2)(A)”.

15 (d) REPEAL OF EXPIRED AUTHORITY FOR TEM-  
 16 PORARY VARIANCES.—Section 207 of such Act (29 U.S.C.  
 17 1057) is repealed.

18 (e) EFFECTIVE DATE.—The amendments made by  
 19 this section shall apply to plan years beginning after 2006.

20 **SEC. 105. SPECIAL RULES FOR MULTIPLE EMPLOYER**  
 21 **PLANS OF CERTAIN COOPERATIVES.**

22 (a) GENERAL RULE.—Except as provided in this sec-  
 23 tion, if a plan in existence on July 26, 2005, was an eligi-  
 24 ble cooperative plan for its plan year which includes such  
 25 date, the amendments made by section 401 of this Act,

1 this subtitle, and subtitle B shall not apply to plan years  
 2 beginning before the earlier of—

- 3 (1) the first plan year for which the plan ceases  
 4 to be an eligible cooperative plan, or
- 5 (2) January 1, 2017.

6 (b) INTEREST RATE.—In applying section  
 7 302(b)(5)(B) of the Employee Retirement Income Secu-  
 8 rity Act of 1974 and section 412(b)(5)(B) of the Internal  
 9 Revenue Code of 1986 (as in effect before the amendments  
 10 made by this subtitle and subtitle B) and in applying sec-  
 11 tion 4006(a)(3)(E)(iii) of such Act (as in effect before the  
 12 amendments made by section 401) to an eligible coopera-  
 13 tive plan for plan years beginning after December 31,  
 14 2006, and before the first plan year to which such amend-  
 15 ments apply, the third segment rate determined under sec-  
 16 tion 303(h)(2)(C)(iii) of such Act and section  
 17 430(h)(2)(C)(iii) of such Code (as added by such amend-  
 18 ments) shall be used in lieu of the interest rate otherwise  
 19 used.

20 (c) ELIGIBLE COOPERATIVE PLAN DEFINED.—For  
 21 purposes of this section, a plan shall be treated as an eligi-  
 22 ble cooperative plan for a plan year if the plan is main-  
 23 tained by more than 1 employer and at least 85 percent  
 24 of the employers are—

1 (1) rural cooperatives (as defined in section  
 2 401(k)(7)(B) of such Code without regard to clause  
 3 (iv) thereof), or

4 (2) organizations which are—

5 (A) cooperative organizations described in  
 6 section 1381(a) of such Code which are more  
 7 than 50-percent owned by agricultural pro-  
 8 ducers or by cooperatives owned by agricultural  
 9 producers, or

10 (B) more than 50-percent owned, or con-  
 11 trolled by, one or more cooperative organiza-  
 12 tions described in subparagraph (A).

13 A plan shall also be treated as an eligible cooperative plan  
 14 for any plan year for which it is described in section  
 15 210(a) of the Employee Retirement Income Security Act  
 16 of 1974 and is maintained by a rural telephone cooperative  
 17 association described in section 3(40)(B)(v) of such Act.

18 **SEC. 106. TEMPORARY RELIEF FOR CERTAIN RESCUED**  
 19 **PLANS.**

20 (a) GENERAL RULE.—Except as provided in this sec-  
 21 tion, if a plan in existence on July 26, 2005, was a rescued  
 22 plan as of such date, the amendments made by section  
 23 401 of this Act, this subtitle, and subtitle B shall not  
 24 apply to plan years beginning before January 1, 2014.

1 (b) INTEREST RATE.—In applying section  
 2 302(b)(5)(B) of the Employee Retirement Income Secu-  
 3 rity Act of 1974 and section 412(b)(5)(B) of the Internal  
 4 Revenue Code of 1986 (as in effect before the amendments  
 5 made by this subtitle and subtitle B), and in applying sec-  
 6 tion 4006(a)(3)(E)(iii) of such Act (as in effect before the  
 7 amendments made by section 401), to a rescued plan for  
 8 plan years beginning after December 31, 2006, and before  
 9 January 1, 2014, the third segment rate determined under  
 10 section 303(h)(2)(C)(iii) of such Act and section  
 11 430(h)(2)(C)(iii) of such Code (as added by such amend-  
 12 ments) shall be used in lieu of the interest rate otherwise  
 13 used.

14 (c) RESCUED PLAN.—For purposes of this section,  
 15 the term “rescued plan” means a defined benefit plan  
 16 (other than a multiemployer plan) to which section 302  
 17 of such Act and section 412 of such Code apply and—

18 (1) which was sponsored by an employer which  
 19 was in bankruptcy, giving rise to a claim by the  
 20 Pension Benefit Guaranty Corporation of at least  
 21 \$100,000,000, but not greater than \$150,000,000,  
 22 and

23 (2) the sponsorship of which was assumed by  
 24 another employer that was not a member of the  
 25 same controlled group as the bankrupt sponsor and



1 the claim of the Pension Benefit Guaranty Corpora-  
 2 tion was settled or withdrawn in connection with the  
 3 assumption of the sponsorship.

## 4 **Subtitle B—Amendments to** 5 **Internal Revenue Code of 1986**

### 6 **SEC. 111. MODIFICATIONS OF THE MINIMUM FUNDING** 7 **STANDARDS.**

8 (a) IN GENERAL.—Section 412 of the Internal Rev-  
 9 enue Code of 1986 (relating to minimum funding stand-  
 10 ards) is amended to read as follows:

#### 11 **“SEC. 412. MINIMUM FUNDING STANDARDS.**

12 “(a) REQUIREMENT TO MEET MINIMUM FUNDING  
 13 STANDARD.—

14 “(1) IN GENERAL.—A plan to which this sec-  
 15 tion applies shall satisfy the minimum funding  
 16 standard applicable to the plan for any plan year.

17 “(2) MINIMUM FUNDING STANDARD.—For pur-  
 18 poses of paragraph (1), a plan shall be treated as  
 19 satisfying the minimum funding standard for a plan  
 20 year if—

21 “(A) in the case of a defined benefit plan  
 22 which is a single-employer plan, the employer  
 23 makes contributions to or under the plan for  
 24 the plan year which, in the aggregate, are not  
 25 less than the minimum required contribution

1           determined under section 430 for the plan for  
2           the plan year,

3           “(B) in the case of a money purchase pen-  
4           sion plan which is a single-employer plan, the  
5           employer makes contributions to or under the  
6           plan for the plan year which are required under  
7           the terms of the plan, and

8           “(C) in the case of a multiemployer plan,  
9           the employers make contributions to or under  
10          the plan for the plan year which, in the aggre-  
11          gate, are sufficient to ensure that the plan does  
12          not have an accumulated funding deficiency  
13          under section 431 as of the end of the plan  
14          year.

15       “(b) PLANS TO WHICH SECTION APPLIES.—

16           “(1) IN GENERAL.—Except as provided in para-  
17          graphs (2) and (3), this section applies to a plan if,  
18          for any plan year beginning on or after the effective  
19          date of this section for such plan under the Em-  
20          ployee Retirement Income Security Act of 1974—

21           “(A) the plan included a trust which quali-  
22          fied (or was determined by the Secretary to  
23          have qualified) under section 401(a), or

1 “(B) the plan satisfied (or was determined  
 2 by the Secretary to have satisfied) the require-  
 3 ments of section 403(a).

4 “(2) EXCEPTIONS.—This section shall not  
 5 apply to—

6 “(A) any profit-sharing or stock bonus  
 7 plan,

8 “(B) any insurance contract plan described  
 9 in subsection (g)(3),

10 “(C) any governmental plan (within the  
 11 meaning of section 414(d)),

12 “(D) any church plan (within the meaning  
 13 of section 414(e)) with respect to which the  
 14 election provided by section 410(d) has not been  
 15 made,

16 “(E) any plan which has not, at any time  
 17 after September 2, 1974, provided for employer  
 18 contributions, or

19 “(F) any plan established and maintained  
 20 by a society, order, or association described in  
 21 section 501(c)(8) or (9), if no part of the con-  
 22 tributions to or under such plan are made by  
 23 employers of participants in such plan.

24 No plan described in subparagraph (C), (D), or (F)  
 25 shall be treated as a qualified plan for purposes of

1 section 401(a) unless such plan meets the require-  
 2 ments of section 401(a)(7) as in effect on September  
 3 1, 1974.

4 “(3) CERTAIN TERMINATED MULTIEMPLOYER  
 5 PLANS.—This section applies with respect to a ter-  
 6 minated multiemployer plan to which section 4021  
 7 of the Employee Retirement Income Security Act of  
 8 1974 applies until the last day of the plan year in  
 9 which the plan terminates (within the meaning of  
 10 section 4041A(a)(2) of such Act).

11 “(c) LIABILITY FOR CONTRIBUTIONS.—

12 “(1) IN GENERAL.—Except as provided in para-  
 13 graph (2), the amount of any contribution required  
 14 by this section and any required installments under  
 15 section 430(j) shall be paid by any employer respon-  
 16 sible for making the contribution to or under the  
 17 plan.

18 “(2) JOINT AND SEVERAL LIABILITY WHERE  
 19 EMPLOYER MEMBER OF CONTROLLED GROUP.—If  
 20 the employer referred to in paragraph (1) is a mem-  
 21 ber of a controlled group, each member of such  
 22 group shall be jointly and severally liable for pay-  
 23 ment of such contribution or required installment.

24 “(d) VARIANCE FROM MINIMUM FUNDING STAND-  
 25 ARDS.—

1           “(1) WAIVER IN CASE OF BUSINESS HARD-  
2       SHIP.—

3           “(A) IN GENERAL.—If—

4                   “(i) an employer is (or in the case of  
5                   a multiemployer plan, 10 percent or more  
6                   of the number of employers contributing to  
7                   or under the plan are) unable to satisfy the  
8                   minimum funding standard for a plan year  
9                   without temporary substantial business  
10                  hardship (substantial business hardship in  
11                  the case of a multiemployer plan), and

12                  “(ii) application of the standard would  
13                  be adverse to the interests of plan partici-  
14                  pants in the aggregate,

15       the Secretary may, subject to subparagraph  
16       (C), waive the requirements of subsection (a)  
17       for such year with respect to all or any portion  
18       of the minimum funding standard. The Sec-  
19       retary of the Treasury shall not waive the min-  
20       imum funding standard with respect to a plan  
21       for more than 3 of any 15 (5 of any 15 in the  
22       case of a multiemployer plan) consecutive plan  
23       years.

1           “(B) EFFECTS OF WAIVER.—If a waiver is  
 2           granted under subparagraph (A) for any plan  
 3           year—

4                   “(i) in the case of a single-employer  
 5                   plan, the minimum required contribution  
 6                   under section 430 for the plan year shall  
 7                   be reduced by the amount of the waived  
 8                   funding deficiency and such amount shall  
 9                   be amortized as required under section  
 10                  430(e), and

11                   “(ii) in the case of a multiemployer  
 12                   plan, the funding standard account shall  
 13                   be credited under section 431(b)(3)(C)  
 14                   with the amount of the waived funding de-  
 15                   ficiency and such amount shall be amor-  
 16                   tized as required under section  
 17                   431(b)(2)(C).

18           “(C) WAIVER OF AMORTIZED PORTION  
 19           NOT ALLOWED.—The Secretary may not waive  
 20           under subparagraph (A) any portion of the  
 21           minimum funding standard under subsection  
 22           (a) for a plan year which is attributable to any  
 23           waived funding deficiency for any preceding  
 24           plan year.

1           “(2) DETERMINATION OF BUSINESS HARD-  
 2 SHIP.—For purposes of this subsection, the factors  
 3 taken into account in determining temporary sub-  
 4 stantial business hardship (substantial business  
 5 hardship in the case of a multiemployer plan) shall  
 6 include (but shall not be limited to) whether or  
 7 not—

8                   “(A) the employer is operating at an eco-  
 9 nomic loss,

10                   “(B) there is substantial unemployment or  
 11 underemployment in the trade or business and  
 12 in the industry concerned,

13                   “(C) the sales and profits of the industry  
 14 concerned are depressed or declining, and

15                   “(D) it is reasonable to expect that the  
 16 plan will be continued only if the waiver is  
 17 granted.

18           “(3) WAIVED FUNDING DEFICIENCY.—For pur-  
 19 poses of this part, the term ‘waived funding defi-  
 20 ciency’ means the portion of the minimum funding  
 21 standard under subsection (a) (determined without  
 22 regard to the waiver) for a plan year waived by the  
 23 Secretary and not satisfied by employer contribu-  
 24 tions.

1           “(4) SECURITY FOR WAIVERS FOR SINGLE-EM-  
2           PLOYER PLANS, CONSULTATIONS.—

3           “(A) SECURITY MAY BE REQUIRED.—

4                   “(i) IN GENERAL.—Except as pro-  
5                   vided in subparagraph (C), the Secretary  
6                   may require an employer maintaining a de-  
7                   fined benefit plan which is a single-em-  
8                   ployer plan (within the meaning of section  
9                   4001(a)(15) of the Employee Retirement  
10                  Income Security Act of 1974) to provide  
11                  security to such plan as a condition for  
12                  granting or modifying a waiver under  
13                  paragraph (1).

14                  “(ii) SPECIAL RULES.—Any security  
15                  provided under clause (i) may be perfected  
16                  and enforced only by the Pension Benefit  
17                  Guaranty Corporation, or, at the direction  
18                  of the Corporation, by a contributing spon-  
19                  sor (within the meaning of section  
20                  4001(a)(13) of such Act) or a member of  
21                  such sponsor’s controlled group (within the  
22                  meaning of section 4001(a)(14) of such  
23                  Act).

24           “(B) CONSULTATION WITH THE PENSION  
25           BENEFIT GUARANTY CORPORATION.—Except as



provided in subparagraph (C), the Secretary shall, before granting or modifying a waiver under this subsection with respect to a plan described in subparagraph (A)(i)—

“(i) provide the Pension Benefit Guaranty Corporation with—

“(I) notice of the completed application for any waiver or modification, and

“(II) an opportunity to comment on such application within 30 days after receipt of such notice, and

“(ii) consider—

“(I) any comments of the Corporation under clause (i)(II), and

“(II) any views of any employee organization (within the meaning of section 3(4) of such Act) representing participants in the plan which are submitted in writing to the Secretary of the Treasury in connection with such application.

Information provided to the Corporation under this subparagraph shall be considered tax return information and subject to the safe-

guarding and reporting requirements of section  
6103(p).

“(C) EXCEPTION FOR CERTAIN WAIV-  
ERS.—

“(i) IN GENERAL.—The preceding  
provisions of this paragraph shall not  
apply to any plan with respect to which the  
sum of—

“(I) the aggregate unpaid min-  
imum required contributions for the  
plan year and all preceding plan  
years, and

“(II) the present value of all  
waiver amortization installments de-  
termined for the plan year and suc-  
ceeding plan years under section  
430(e)(2),  
is less than \$1,000,000.

“(ii) TREATMENT OF WAIVERS FOR  
WHICH APPLICATIONS ARE PENDING.—The  
amount described in clause (i)(I) shall in-  
clude any increase in such amount which  
would result if all applications for waivers  
of the minimum funding standard under

1           this subsection which are pending with re-  
2           spect to such plan were denied.

3           “(iii) UNPAID MINIMUM REQUIRED  
4           CONTRIBUTION.—For purposes of this  
5           subparagraph—

6                       “(I) IN GENERAL.—The term  
7                       ‘unpaid minimum required contribu-  
8                       tion’ means, with respect to any plan  
9                       year, any minimum required contribu-  
10                      tion under section 430 for the plan  
11                      year which is not paid on or before  
12                      the due date (as determined under  
13                      section 430(j)(1)) for the plan year.

14                     “(II) ORDERING RULE.—For  
15                     purposes of subclause (I), any pay-  
16                     ment to or under a plan for any plan  
17                     year shall be allocated first to unpaid  
18                     minimum required contributions for  
19                     all preceding plan years on a first-in,  
20                     first-out basis and then to the min-  
21                     imum required contribution under sec-  
22                     tion 430 for the plan year.

23           “(5) SPECIAL RULES FOR SINGLE-EMPLOYER  
24           PLANS.—

“(A) APPLICATION MUST BE SUBMITTED  
BEFORE DATE 2½ MONTHS AFTER CLOSE OF  
YEAR.—In the case of a single-employer plan,  
no waiver may be granted under this subsection  
with respect to any plan for any plan year un-  
less an application therefor is submitted to the  
Secretary not later than the 15th day of the  
3rd month beginning after the close of such  
plan year.

“(B) SPECIAL RULE IF EMPLOYER IS MEM-  
BER OF CONTROLLED GROUP.—In the case of a  
single-employer plan, if an employer is a mem-  
ber of a controlled group, the temporary sub-  
stantial business hardship requirements of  
paragraph (1) shall be treated as met only if  
such requirements are met—

“(i) with respect to such employer,  
and

“(ii) with respect to the controlled  
group of which such employer is a member  
(determined by treating all members of  
such group as a single employer).

The Secretary may provide that an analysis of  
a trade or business or industry of a member  
need not be conducted if the Secretary deter-

1 mines such analysis is not necessary because  
2 the taking into account of such member would  
3 not significantly affect the determination under  
4 this paragraph.

5 “(6) ADVANCE NOTICE.—

6 “(A) IN GENERAL.—The Secretary shall,  
7 before granting a waiver under this subsection,  
8 require each applicant to provide evidence satis-  
9 factory to such Secretary that the applicant has  
10 provided notice of the filing of the application  
11 for such waiver to each affected party (as de-  
12 fined in section 4001(a)(21) of the Employee  
13 Retirement Income Security Act of 1974) other  
14 than the Pension Benefit Guaranty Corporation  
15 and in the case of a multiemployer plan, to each  
16 employer required to contribute to the plan  
17 under subsection (b)(1). Such notice shall in-  
18 clude a description of the extent to which the  
19 plan is funded for benefits which are guaran-  
20 teed under title IV of such Act and for benefit  
21 liabilities.

22 “(B) CONSIDERATION OF RELEVANT IN-  
23 FORMATION.—The Secretary shall consider any  
24 relevant information provided by a person to

1           whom notice was given under subparagraph  
2           (A).

3           “(7) RESTRICTION ON PLAN AMENDMENTS.—

4                   “(A) IN GENERAL.—No amendment of a  
5           plan which increases the liabilities of the plan  
6           by reason of any increase in benefits, any  
7           change in the accrual of benefits, or any change  
8           in the rate at which benefits become nonforfeit-  
9           able under the plan shall be adopted if a waiver  
10          under this subsection or an extension of time  
11          under section 431(d) is in effect with respect to  
12          the plan, or if a plan amendment described in  
13          subsection (e)(2) has been made at any time in  
14          the preceding 24 months. If a plan is amended  
15          in violation of the preceding sentence, any such  
16          waiver, or extension of time, shall not apply to  
17          any plan year ending on or after the date on  
18          which such amendment is adopted.

19                  “(B) EXCEPTION.—Subparagraph (A)  
20          shall not apply to any plan amendment which—

21                   “(i) the Secretary determines to be  
22                  reasonable and which provides for only de  
23                  minimis increases in the liabilities of the  
24                  plan,

1                   “(ii) only repeals an amendment de-  
2                   scribed in subsection (e)(2), or

3                   “(iii) is required as a condition of  
4                   qualification under part I of subchapter D,  
5                   of chapter 1 of the Internal Revenue Code  
6                   of 1986.

7           “(e) MISCELLANEOUS RULES.—For purposes of this  
8 section—

9                   “(1) CHANGE IN METHOD OR YEAR.—If the  
10                  funding method, the valuation date, or a plan year  
11                  for a plan is changed, the change shall take effect  
12                  only if approved by the Secretary.

13                  “(2) CERTAIN RETROACTIVE PLAN AMEND-  
14                  MENTS.—For purposes of this section, any amend-  
15                  ment applying to a plan year which—

16                       “(A) is adopted after the close of such plan  
17                       year but no later than 2½ months after the  
18                       close of the plan year (or, in the case of a mul-  
19                       tiemployer plan, no later than 2 years after the  
20                       close of such plan year),

21                       “(B) does not reduce the accrued benefit  
22                       of any participant determined as of the begin-  
23                       ning of the first plan year to which the amend-  
24                       ment applies, and

1           “(C) does not reduce the accrued benefit of  
2           any participant determined as of the time of  
3           adoption except to the extent required by the  
4           circumstances,  
5           shall, at the election of the plan administrator, be  
6           deemed to have been made on the first day of such  
7           plan year. No amendment described in this para-  
8           graph which reduces the accrued benefits of any par-  
9           ticipant shall take effect unless the plan adminis-  
10          trator files a notice with the Secretary notifying him  
11          of such amendment and the Secretary has approved  
12          such amendment, or within 90 days after the date  
13          on which such notice was filed, failed to disapprove  
14          such amendment. No amendment described in this  
15          subsection shall be approved by the Secretary unless  
16          the Secretary determines that such amendment is  
17          necessary because of a temporary substantial busi-  
18          ness hardship (as determined under subsection  
19          (d)(2)) or a substantial business hardship (as so de-  
20          termined) in the case of a multiemployer plan and  
21          that a waiver under subsection (d)(1) (or in the case  
22          of a multiemployer plan, any extension of the amor-  
23          tization period under section 431(d)) is unavailable  
24          or inadequate.



1           “(3) CERTAIN INSURANCE CONTRACT PLANS.—

2           A plan is described in this paragraph if—

3                   “(A) the plan is funded exclusively by the  
4                   purchase of individual insurance contracts,

5                   “(B) such contracts provide for level an-  
6                   nual premium payments to be paid extending  
7                   not later than the retirement age for each indi-  
8                   vidual participating in the plan, and com-  
9                   mencing with the date the individual became a  
10                  participant in the plan (or, in the case of an in-  
11                  crease in benefits, commencing at the time such  
12                  increase becomes effective),

13                  “(C) benefits provided by the plan are  
14                  equal to the benefits provided under each con-  
15                  tract at normal retirement age under the plan  
16                  and are guaranteed by an insurance carrier (li-  
17                  censed under the laws of a State to do business  
18                  with the plan) to the extent premiums have  
19                  been paid,

20                  “(D) premiums payable for the plan year,  
21                  and all prior plan years, under such contracts  
22                  have been paid before lapse or there is rein-  
23                  statement of the policy,

1           “(E) no rights under such contracts have  
 2           been subject to a security interest at any time  
 3           during the plan year, and

4           “(F) no policy loans are outstanding at  
 5           any time during the plan year.

6           A plan funded exclusively by the purchase of group  
 7           insurance contracts which are determined under reg-  
 8           ulations prescribed by the Secretary to have the  
 9           same characteristics as contracts described in the  
 10          preceding sentence shall be treated as a plan de-  
 11          scribed in this paragraph.

12          “(4) CONTROLLED GROUP.—For purposes of  
 13          this section and section 430, the term ‘controlled  
 14          group’ means any group treated as a single employer  
 15          under subsection (b), (c), (m), or (o) of section  
 16          414.”.

17          (b) EFFECTIVE DATE.—The amendment made by  
 18          this section shall apply to plan years beginning after De-  
 19          cember 31, 2006.

20       **SEC. 112. FUNDING RULES APPLICABLE TO SINGLE-EM-**  
 21       **PLOYER PENSION PLANS.**

22          Subchapter D of chapter 1 of the Internal Revenue  
 23          Code of 1986 (relating to deferred compensation, etc.) is  
 24          amended by adding at the end the following new part:

1       **“PART III—RULES RELATING TO MINIMUM**  
 2       **FUNDING STANDARDS AND BENEFIT LIMITATION**

“430. Minimum funding standards for single-employer defined benefit plans.

“431. Minimum funding standards for multiemployer plans.

3       **“SEC. 430. MINIMUM FUNDING STANDARDS FOR SINGLE-**  
 4               **EMPLOYER DEFINED BENEFIT PLANS.**

5       “(a) MINIMUM REQUIRED CONTRIBUTION.—For  
 6 purposes of this section and section 412(a)(2)(A), except  
 7 as provided in subsection (f), the term ‘minimum required  
 8 contribution’ means, with respect to any plan year of a  
 9 defined benefit plan which is a single employer plan—

10               “(1) in any case in which the value of plan as-  
 11 sets of the plan (as reduced under subsection (f)(4))  
 12 is less than the funding target of the plan for the  
 13 plan year, the sum of—

14               “(A) the target normal cost of the plan for  
 15 the plan year,

16               “(B) the shortfall amortization charge (if  
 17 any) for the plan for the plan year determined  
 18 under subsection (c), and

19               “(C) the waiver amortization charge (if  
 20 any) for the plan for the plan year as deter-  
 21 mined under subsection (e); or

22               “(2) in any case in which the value of plan as-  
 23 sets of the plan (as reduced under subsection (f)(4))  
 24 equals or exceeds the funding target of the plan for

1 the plan year, the target normal cost of the plan for  
 2 the plan year reduced (but not below zero) by any  
 3 such excess.

4 “(b) TARGET NORMAL COST.—For purposes of this  
 5 section, except as provided in subsection (i)(2) with re-  
 6 spect to plans in at-risk status, the term ‘target normal  
 7 cost’ means, for any plan year, the present value of all  
 8 benefits which are expected to accrue or to be earned  
 9 under the plan during the plan year. For purposes of this  
 10 subsection, if any benefit attributable to services per-  
 11 formed in a preceding plan year is increased by reason  
 12 of any increase in compensation during the current plan  
 13 year, the increase in such benefit shall be treated as hav-  
 14 ing accrued during the current plan year.

15 “(c) SHORTFALL AMORTIZATION CHARGE.—

16 “(1) IN GENERAL.—For purposes of this sec-  
 17 tion, the shortfall amortization charge for a plan for  
 18 any plan year is the aggregate total of the shortfall  
 19 amortization installments for such plan year with re-  
 20 spect to the shortfall amortization bases for such  
 21 plan year and each of the 6 preceding plan years.

22 “(2) SHORTFALL AMORTIZATION INSTALL-  
 23 MENT.—For purposes of paragraph (1)—

24 “(A) DETERMINATION.—The shortfall am-  
 25 ortization installments are the amounts nec-

1           essary to amortize the shortfall amortization  
 2           base of the plan for any plan year in level an-  
 3           nual installments over the 7-plan-year period  
 4           beginning with such plan year.

5           “(B) SHORTFALL INSTALLMENT.—The  
 6           shortfall amortization installment for any plan  
 7           year in the 7-plan-year period under subpara-  
 8           graph (A) with respect to any shortfall amorti-  
 9           zation base is the annual installment deter-  
 10          mined under subparagraph (A) for that year for  
 11          that base.

12          “(C) SEGMENT RATES.—In determining  
 13          any shortfall amortization installment under  
 14          this paragraph, the plan sponsor shall use the  
 15          segment rates determined under subparagraph  
 16          (C) of subsection (h)(2), applied under rules  
 17          similar to the rules of subparagraph (B) of sub-  
 18          section (h)(2).

19          “(3) SHORTFALL AMORTIZATION BASE.—For  
 20          purposes of this section, the shortfall amortization  
 21          base of a plan for a plan year is the excess (if any)  
 22          of—

23                 “(A) the funding shortfall of such plan for  
 24                 such plan year, over

1           “(B) the present value (determined using  
 2           the segment rates determined under subpara-  
 3           graph (C) of subsection (h)(2), applied under  
 4           rules similar to the rules of subparagraph (B)  
 5           of subsection (h)(2)) of the aggregate total of  
 6           the shortfall amortization installments and  
 7           waiver amortization installments which have  
 8           been determined for such plan year and any  
 9           succeeding plan year with respect to the short-  
 10          fall amortization bases and waiver amortization  
 11          bases of the plan for any plan year preceding  
 12          such plan year.

13          “(4) FUNDING SHORTFALL.—

14           “(A) IN GENERAL.—For purposes of this  
 15           section, except as provided in subparagraph  
 16           (B), the funding shortfall of a plan for any plan  
 17           year is the excess (if any) of—

18                   “(i) the funding target of the plan for  
 19                   the plan year, over

20                   “(ii) the value of plan assets of the  
 21                   plan (as reduced under subsection (f)(4))  
 22                   for the plan year which are held by the  
 23                   plan on the valuation date.

24          “(B) TRANSITION RULE FOR AMORTIZA-  
 25          TION OF FUNDING SHORTFALL.—

“(i) IN GENERAL.—Solely for purposes of applying paragraph (3) in the case of plan years beginning after 2006 and before 2011, only the applicable percentage of the funding target shall be taken into account under paragraph (3)(A) in determining the funding shortfall for the plan year.

“(ii) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A)—

“(I) IN GENERAL.—Except as provided in subclause (II), the applicable percentage shall be 93 percent for plan years beginning in 2007, 96 percent for plan years beginning in 2008, and 100 percent for any succeeding plan year.

“(II) SMALL PLANS.—In the case of a plan described in subsection (g)(2)(B), the applicable percentage shall be determined in accordance with the following table:

<b>“In the case of a plan year beginning in calendar year:</b>	<b>The applicable percentage is—</b>
2007 .....	92
2008 .....	94
2009 .....	96
2010 .....	98.

1           “(5) EARLY DEEMED AMORTIZATION UPON AT-  
 2           TAINMENT OF FUNDING TARGET.—In any case in  
 3           which the funding shortfall of a plan for a plan year  
 4           is zero, for purposes of determining the shortfall am-  
 5           ortization charge for such plan year and succeeding  
 6           plan years, the shortfall amortization bases for all  
 7           preceding plan years (and all shortfall amortization  
 8           installments determined with respect to such bases)  
 9           shall be reduced to zero.

10          “(d) RULES RELATING TO FUNDING TARGET.—For  
 11         purposes of this section—

12                 “(1) FUNDING TARGET.—Except as provided in  
 13                 subsection (i)(1) with respect to plans in at-risk sta-  
 14                 tus, the funding target of a plan for a plan year is  
 15                 the present value of all benefits accrued or earned  
 16                 under the plan as of the beginning of the plan year.

17                 “(2) FUNDING TARGET ATTAINMENT PERCENT-  
 18                 AGE.—The ‘funding target attainment percentage’ of  
 19                 a plan for a plan year is the ratio (expressed as a  
 20                 percentage) which—

21                         “(A) the value of plan assets for the plan  
 22                         year, bears to

23                         “(B) the funding target of the plan for the  
 24                         plan year (determined without regard to sub-  
 25                         section (i)(1)).



1 “(e) WAIVER AMORTIZATION CHARGE.—

2 “(1) DETERMINATION OF WAIVER AMORTIZA-  
3 TION CHARGE.—The waiver amortization charge (if  
4 any) for a plan for any plan year is the aggregate  
5 total of the waiver amortization installments for  
6 such plan year with respect to the waiver amortiza-  
7 tion bases for each of the 5 preceding plan years.

8 “(2) WAIVER AMORTIZATION INSTALLMENT.—  
9 For purposes of paragraph (1)—

10 “(A) DETERMINATION.—The waiver amor-  
11 tization installments are the amounts necessary  
12 to amortize the waiver amortization base of the  
13 plan for any plan year in level annual install-  
14 ments over a period of 5 plan years beginning  
15 with the succeeding plan year.

16 “(B) WAIVER INSTALLMENT.—The waiver  
17 amortization installment for any plan year in  
18 the 5-year period under subparagraph (A) with  
19 respect to any waiver amortization base is the  
20 annual installment determined under subpara-  
21 graph (A) for that year for that base.

22 “(3) INTEREST RATE.—In determining any  
23 waiver amortization installment under this sub-  
24 section, the plan sponsor shall use the segment rates  
25 determined under subparagraph (C) of subsection

1 (h)(2), applied under rules similar to the rules of  
 2 subparagraph (B) of subsection (h)(2).

3 “(4) WAIVER AMORTIZATION BASE.—The waiv-  
 4 er amortization base of a plan for a plan year is the  
 5 amount of the waived funding deficiency (if any) for  
 6 such plan year under section 412(d).

7 “(5) EARLY DEEMED AMORTIZATION UPON AT-  
 8 TAINMENT OF FUNDING TARGET.—In any case in  
 9 which the funding shortfall of a plan for a plan year  
 10 is zero, for purposes of determining the waiver am-  
 11 ortization charge for such plan year and succeeding  
 12 plan years, the waiver amortization bases for all pre-  
 13 ceding plan years (and all waiver amortization in-  
 14 stallments with respect to such bases) shall be re-  
 15 duced to zero.

16 “(f) USE OF PREFUNDING BALANCES TO SATISFY  
 17 MINIMUM REQUIRED CONTRIBUTIONS.—

18 “(1) IN GENERAL.—A plan sponsor may credit  
 19 any amount of a plan’s prefunding balance for a  
 20 plan year against the minimum required contribu-  
 21 tion for the plan year and the amount of the con-  
 22 tributions an employer is required to make under  
 23 section 412(c) for the plan year shall be reduced by  
 24 the amount so credited. Any such amount shall be  
 25 credited on the first day of the plan year.

1 “(2) PREFUNDING BALANCE.—

2 “(A) BEGINNING BALANCE.—The begin-  
 3 ning balance of a prefunding balance main-  
 4 tained by a plan shall be zero, except that if a  
 5 plan was in effect for a plan year beginning in  
 6 2006 and had a positive balance in the funding  
 7 standard account under section 412(b) (as in  
 8 effect for such plan year) as of the end of such  
 9 plan year, the beginning balance for the plan  
 10 for its first plan year beginning after 2006 shall  
 11 be such positive balance.

12 “(B) INCREASES.—

13 “(i) IN GENERAL.—As of the first day  
 14 of each plan year beginning after 2007, the  
 15 prefunding balance of a plan shall be in-  
 16 creased by the excess (if any) of—

17 “(I) the aggregate amount of em-  
 18 ployer contributions to the plan for  
 19 the preceding plan year, over

20 “(II) the minimum required con-  
 21 tribution for the preceding plan year.

22 “(ii) ADJUSTMENTS FOR INTEREST.—  
 23 Any excess contributions under clause (i)  
 24 shall be properly adjusted for interest ac-  
 25 cruing for the periods between the first

1 day of the current plan year and the dates  
 2 on which the excess contributions were  
 3 made, determined by using the effective in-  
 4 terest rate for the preceding plan year and  
 5 by treating contributions as being first  
 6 used to satisfy the minimum required con-  
 7 tribution.

8 “(iii) CERTAIN CONTRIBUTIONS DIS-  
 9 REGARDED.—Any contribution which is re-  
 10 quired to be made under section 436 in ad-  
 11 dition to any contribution required under  
 12 this section shall not be taken into account  
 13 for purposes of clause (i).

14 “(C) DECREASES.—As of the first day of  
 15 each plan year after 2007, the prefunding bal-  
 16 ance of a plan shall be decreased (but not below  
 17 zero) by the amount of the balance credited  
 18 under paragraph (1) against the minimum re-  
 19 quired contribution of the plan for the pre-  
 20 ceding plan year.

21 “(D) ADJUSTMENTS FOR INVESTMENT EX-  
 22 PERIENCE.—In determining the prefunding bal-  
 23 ance of a plan as of the first day of the plan  
 24 year, the plan sponsor shall, in accordance with  
 25 regulations prescribed by the Secretary, adjust

such balance to reflect the rate of return on plan assets for the preceding plan year. Notwithstanding subsection (g)(3), such rate of return shall be determined on the basis of fair market value and shall properly take into account, in accordance with such regulations, all contributions, distributions, and other plan payments made during such period.

“(3) LIMITATION FOR UNDERFUNDED PLANS.—

“(A) IN GENERAL.—If the ratio (expressed as a percentage) for any plan year which—

“(i) the value of plan assets for the preceding plan year, bears to

“(ii) the funding target of the plan for the preceding plan year (determined without regard to subsection (i)(1)),

is less than 80 percent, the preceding provisions of this subsection shall not apply unless employers liable for contributions to the plan under section 412(c) make contributions to the plan for the plan year in an aggregate amount not less than the amount determined under subparagraph (B). Any contribution required by this subparagraph may not be reduced by any credit otherwise allowable under paragraph (1).

1                   “(B) APPLICABLE AMOUNT.—The amount  
 2                   determined under this subparagraph for any  
 3                   plan year is the greater of—

4                   “(i) the target normal cost of the plan  
 5                   for the plan year, or

6                   “(ii) 25 percent of the minimum re-  
 7                   quired contribution under subsection (a)  
 8                   for the plan year without regard to this  
 9                   subsection.

10                  “(4) REDUCTION IN VALUE OF ASSETS.—Solely  
 11                  for purposes of applying subsections (a) and  
 12                  (c)(4)(A)(ii) in determining the minimum required  
 13                  contribution under this section, the value of the plan  
 14                  assets otherwise determined without regard to this  
 15                  paragraph shall be reduced by the amount of the  
 16                  prefunding balance under this subsection.

17                  “(g) VALUATION OF PLAN ASSETS AND LIABIL-  
 18                  ITIES.—

19                  “(1) TIMING OF DETERMINATIONS.—Except as  
 20                  otherwise provided under this subsection, all deter-  
 21                  minations under this section for a plan year shall be  
 22                  made as of the valuation date of the plan for such  
 23                  plan year.

24                  “(2) VALUATION DATE.—For purposes of this  
 25                  section—

1           “(A) IN GENERAL.—Except as provided in  
2           subparagraph (B), the valuation date of a plan  
3           for any plan year shall be the first day of the  
4           plan year.

5           “(B) EXCEPTION FOR SMALL PLANS.—If,  
6           on each day during the preceding plan year, a  
7           plan had 100 or fewer participants, the plan  
8           may designate any day during the plan year as  
9           its valuation date for such plan year and suc-  
10          ceeding plan years. For purposes of this sub-  
11          paragraph, all defined benefit plans (other than  
12          multiemployer plans) maintained by the same  
13          employer (or any member of such employer’s  
14          controlled group) shall be treated as 1 plan, but  
15          only employees of such employer or member  
16          shall be taken into account.

17          “(C) APPLICATION OF CERTAIN RULES IN  
18          DETERMINATION OF PLAN SIZE.—For purposes  
19          of this paragraph—

20               “(i) PLANS NOT IN EXISTENCE IN  
21               PRECEDING YEAR.—In the case of the first  
22               plan year of any plan, subparagraph (B)  
23               shall apply to such plan by taking into ac-  
24               count the number of participants that the

1 plan is reasonably expected to have on  
2 days during such first plan year.

3 “(ii) PREDECESSORS.—Any reference  
4 in subparagraph (B) to an employer shall  
5 include a reference to any predecessor of  
6 such employer.

7 “(3) DETERMINATION OF VALUE OF PLAN AS-  
8 SETS.—For purposes of this section—

9 “(A) IN GENERAL.—Except as provided in  
10 subparagraph (B), the value of plan assets shall  
11 be the fair market value of the assets.

12 “(B) AVERAGING ALLOWED.—A plan may  
13 determine the value of plan assets on the basis  
14 of any reasonable actuarial method of valuation  
15 providing for the averaging of fair market val-  
16 ues, but only if such method—

17 “(i) is permitted under regulations  
18 prescribed by the Secretary, and

19 “(ii) does not provide for averaging of  
20 such values over more than the period be-  
21 ginning on the last day of the 12th month  
22 preceding the valuation date and ending on  
23 the valuation date (or a similar period in  
24 the case of a valuation date which is not  
25 the 1st day of a month).



1           “(4) ACCOUNTING FOR CONTRIBUTION RE-  
 2           CEIPTS.—For purposes of determining the value of  
 3           assets under paragraph (3)—

4                   “(A) PRIOR YEAR CONTRIBUTIONS.—If—

5                           “(i) an employer makes any contribu-  
 6                           tion to the plan after the valuation date for  
 7                           the plan year in which the contribution is  
 8                           made, and

9                           “(ii) the contribution is for a pre-  
 10                          ceding plan year,

11           the contribution shall be taken into account as  
 12           an asset of the plan as of the valuation date,  
 13           except that in the case of any plan year begin-  
 14           ning after 2007, only the present value (deter-  
 15           mined as of the valuation date) of such con-  
 16           tribution may be taken into account. For pur-  
 17           poses of the preceding sentence, present value  
 18           shall be determined using the effective interest  
 19           rate for the preceding plan year to which the  
 20           contribution is properly allocable.

21                   “(B) SPECIAL RULE FOR CURRENT YEAR  
 22                   CONTRIBUTIONS MADE BEFORE VALUATION  
 23                   DATE.—If any contributions for any plan year  
 24                   are made to or under the plan during the plan  
 25                   year but before the valuation date for the plan

1           year, the assets of the plan as of the valuation  
2           date shall not include—

3                   “(i) such contributions, and

4                   “(ii) interest on such contributions for  
5           the period between the date of the con-  
6           tributions and the valuation date, deter-  
7           mined by using the effective interest rate  
8           for the plan year.

9           “(h) ACTUARIAL ASSUMPTIONS AND METHODS.—

10                   “(1) IN GENERAL.—Subject to this subsection,  
11           the determination of any present value or other com-  
12           putation under this section shall be made on the  
13           basis of actuarial assumptions and methods—

14                   “(A) each of which is reasonable (taking  
15           into account the experience of the plan and rea-  
16           sonable expectations), and

17                   “(B) which, in combination, offer the actu-  
18           ary’s best estimate of anticipated experience  
19           under the plan.

20           “(2) INTEREST RATES.—

21                   “(A) EFFECTIVE INTEREST RATE.—For  
22           purposes of this section, the term ‘effective in-  
23           terest rate’ means, with respect to any plan for  
24           any plan year, the single rate of interest which,  
25           if used to determine the present value of the

1 plan’s accrued or earned benefits referred to in  
 2 subsection (d)(1), would result in an amount  
 3 equal to the funding target of the plan for such  
 4 plan year.

5 “(B) INTEREST RATES FOR DETERMINING  
 6 FUNDING TARGET.—For purposes of deter-  
 7 mining the funding target of a plan for any  
 8 plan year, the interest rate used in determining  
 9 the present value of the benefits of the plan  
 10 shall be—

11 “(i) in the case of benefits reasonably  
 12 determined to be payable during the 5-year  
 13 period beginning on the first day of the  
 14 plan year, the first segment rate with re-  
 15 spect to the applicable month,

16 “(ii) in the case of benefits reasonably  
 17 determined to be payable during the 15-  
 18 year period beginning at the end of the pe-  
 19 riod described in clause (i), the second seg-  
 20 ment rate with respect to the applicable  
 21 month, and

22 “(iii) in the case of benefits reason-  
 23 ably determined to be payable after the pe-  
 24 riod described in clause (ii), the third seg-

1                   ment rate with respect to the applicable  
2                   month.

3                   “(C) SEGMENT RATES.—For purposes of  
4                   this paragraph—

5                   “(i) FIRST SEGMENT RATE.—The  
6                   term ‘first segment rate’ means, with re-  
7                   spect to any month, the single rate of in-  
8                   terest which shall be determined by the  
9                   Secretary for such month on the basis of  
10                  the corporate bond yield curve for such  
11                  month, taking into account only that por-  
12                  tion of such yield curve which is based on  
13                  bonds maturing during the 5-year period  
14                  commencing with such month.

15                  “(ii) SECOND SEGMENT RATE.—The  
16                  term ‘second segment rate’ means, with re-  
17                  spect to any month, the single rate of in-  
18                  terest which shall be determined by the  
19                  Secretary for such month on the basis of  
20                  the corporate bond yield curve for such  
21                  month, taking into account only that por-  
22                  tion of such yield curve which is based on  
23                  bonds maturing during each of the years in  
24                  the 15-year period beginning at the end of  
25                  the period described in clause (i).

1                   “(iii) THIRD SEGMENT RATE.—The  
 2                   term ‘third segment rate’ means, with re-  
 3                   spect to any month, the single rate of in-  
 4                   terest which shall be determined by the  
 5                   Secretary for such month on the basis of  
 6                   the corporate bond yield curve for such  
 7                   month, taking into account only that por-  
 8                   tion of such yield curve which is based on  
 9                   bonds maturing during periods beginning  
 10                  after the period described in clause (ii).

11                  “(D) CORPORATE BOND YIELD CURVE.—  
 12                  The term ‘corporate bond yield curve’ means,  
 13                  with respect to any month, a yield curve which  
 14                  is prescribed by the Secretary for such month  
 15                  and which reflects the average, for the 12-  
 16                  month period ending with the month preceding  
 17                  such month, of yields on investment grade cor-  
 18                  porate bonds with varying maturities.

19                  “(E) APPLICABLE MONTH.—For purposes  
 20                  of this paragraph, the term ‘applicable month’  
 21                  means, with respect to any plan for any plan  
 22                  year, the month which includes the valuation  
 23                  date of such plan for such plan year or, at the  
 24                  election of the plan administrator, any of the 4  
 25                  months which precede such month. Any election

made under this subparagraph shall apply to the plan year for which the election is made and all succeeding plan years, unless the election is revoked with the consent of the Secretary.

“(F) PUBLICATION REQUIREMENTS.—The Secretary shall publish for each month the corporate bond yield curve for such month and each of the rates determined under this paragraph for such month. The Secretary shall also publish a description of the methodology used to determine such yield curve and such rates which is sufficiently detailed to enable plans to make reasonable projections regarding the yield curve and such rates for future months based on the plan’s projection of future interest rates.

“(G) TRANSITION RULE.—

“(i) IN GENERAL.—Notwithstanding the preceding provisions of this paragraph, for plan years beginning in 2007 or 2008, the first, second, or third segment rate for a plan with respect to any month shall be equal to the sum of—

“(I) the product of such rate for such month determined without re-

gard to this subparagraph, multiplied  
by the applicable percentage, and

“(II) the product of the rate determined under the rules of section 412(b)(5)(B)(ii)(II) (as in effect for plan years beginning in 2006), multiplied by a percentage equal to 100 percent minus the applicable percentage.

“(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is  $33\frac{1}{3}$  percent for plan years beginning in 2007 and  $66\frac{2}{3}$  percent for plan years beginning in 2008.

“(3) MORTALITY TABLES.—

“(A) IN GENERAL.—Except as provided in subparagraphs (C) and (D), the mortality table used in determining any present value or making any computation under this section shall be the RP-2000 Combined Mortality Table, using Scale AA, as published by the Society of Actuaries, as in effect on the date of the enactment of the Pension Security and Transparency Act of 2005 and as revised from time to time under subparagraph (B).

1           “(B) PERIODIC REVISION.—The Secretary  
 2           shall (at least every 10 years) make revisions in  
 3           any table in effect under subparagraph (A) to  
 4           reflect the actual experience of pension plans  
 5           and projected trends in such experience.

6           “(C) SUBSTITUTE MORTALITY TABLE.—

7                   “(i) IN GENERAL.—Upon request by  
 8           the plan sponsor and approval by the Sec-  
 9           retary, a mortality table which meets the  
 10          requirements of clause (ii) shall be used in  
 11          determining any present value or making  
 12          any computation under this section during  
 13          the 10-consecutive plan year period speci-  
 14          fied in the request. A mortality table de-  
 15          scribed in this clause shall cease to be in  
 16          effect if the plan actuary determines at  
 17          any time that such table does not meet the  
 18          requirements of clause (ii).

19                  “(ii) REQUIREMENTS.—A mortality  
 20          table meets the requirements of this clause  
 21          if the Secretary determines that—

22                          “(I) there is a sufficient number  
 23                          of plan participants, and the pension  
 24                          plans have been maintained for a suf-  
 25                          ficient period of time, to have credible



1 information necessary for purposes of  
2 subclause (II),

3 “(II) such table reflects the ac-  
4 tual experience of the pension plans  
5 maintained by the sponsor and pro-  
6 jected trends in general mortality ex-  
7 perience,

8 “(III) except as provided by the  
9 Secretary, such table will be used by  
10 all plans maintained by the plan spon-  
11 sor and all members of any controlled  
12 group which includes the plan spon-  
13 sor, and

14 “(IV) such table is significantly  
15 different from the table described in  
16 subparagraph (A).

17 “(iii) DEADLINE FOR DISPOSITION OF  
18 APPLICATION.—Any mortality table sub-  
19 mitted to the Secretary for approval under  
20 this subparagraph shall be treated as in ef-  
21 fect for the first plan year in the 10-year  
22 period described in clause (i) unless the  
23 Secretary, during the 180-day period be-  
24 ginning on the date of such submission,  
25 disapproves of such table and provides the

1 reasons that such table fails to meet the  
 2 requirements of clause (ii). The 180-day  
 3 period shall be extended for any period  
 4 during which the Secretary has requested  
 5 information from the plan sponsor and  
 6 such information has not been provided.

7 “(D) SEPARATE MORTALITY TABLES FOR  
 8 THE DISABLED.—Notwithstanding subpara-  
 9 graph (A)—

10 “(i) IN GENERAL.—The Secretary  
 11 shall establish mortality tables which may  
 12 be used (in lieu of the tables under sub-  
 13 paragraph (A)) under this subsection for  
 14 individuals who are entitled to benefits  
 15 under the plan on account of disability.  
 16 The Secretary shall establish separate ta-  
 17 bles for individuals whose disabilities occur  
 18 in plan years beginning before January 1,  
 19 1995, and for individuals whose disabilities  
 20 occur in plan years beginning on or after  
 21 such date.

22 “(ii) SPECIAL RULE FOR DISABILITIES  
 23 OCCURRING AFTER 1994.—In the case of  
 24 disabilities occurring in plan years begin-  
 25 ning after December 31, 1994, the tables

1 under clause (i) shall apply only with re-  
 2 spect to individuals described in such sub-  
 3 clause who are disabled within the meaning  
 4 of title II of the Social Security Act and  
 5 the regulations thereunder.

6 “(iii) PERIODIC REVISION.—The Sec-  
 7 retary shall (at least every 10 years) make  
 8 revisions in any table in effect under clause  
 9 (i) to reflect the actual experience of pen-  
 10 sion plans and projected trends in such ex-  
 11 perience.

12 “(E) TRANSITION RULE.—Under regula-  
 13 tions of the Secretary, any difference in present  
 14 value resulting from any differences in assump-  
 15 tions as set forth in the mortality table speci-  
 16 fied in subparagraph (A) and assumptions as  
 17 set forth in the mortality table described in sec-  
 18 tion 412(l)(7)(C)(ii) (as in effect for plan years  
 19 beginning in 2006) shall be phased in ratably  
 20 over the first period of 5 plan years beginning  
 21 in or after 2007 so as to be fully effective for  
 22 the fifth plan year.

23 “(4) PROBABILITY OF BENEFIT PAYMENTS IN  
 24 THE FORM OF LUMP SUMS OR OTHER OPTIONAL  
 25 FORMS.—For purposes of determining any present

1 value or making any computation under this section,  
 2 there shall be taken into account—

3 “(A) the probability that future benefit  
 4 payments under the plan will be made in the  
 5 form of optional forms of benefits provided  
 6 under the plan (including lump sum distribu-  
 7 tions, determined on the basis of the plan’s ex-  
 8 perience and other related assumptions), and

9 “(B) any difference in the present value of  
 10 such future benefit payments resulting from the  
 11 use of actuarial assumptions, in determining  
 12 benefit payments in any such optional form of  
 13 benefits, which are different from those speci-  
 14 fied in this subsection.

15 “(5) APPROVAL OF LARGE CHANGES IN ACTU-  
 16 ARIAL ASSUMPTIONS.—

17 “(A) IN GENERAL.—No actuarial assump-  
 18 tion used to determine the funding target for a  
 19 plan to which this paragraph applies may be  
 20 changed without the approval of the Secretary.

21 “(B) PLANS TO WHICH PARAGRAPH AP-  
 22 PLIES.—This paragraph shall apply to a plan  
 23 only if—

24 “(i) the aggregate unfunded benefits  
 25 as of the close of the preceding plan year

(as determined under section 4006(a)(3)(E)(iii) of the Employee Retirement Income Security Act of 1974) of such plan and all other plans maintained by the contributing sponsors (as defined in section 4001(a)(13) of such Act) and members of such sponsors' controlled groups (as defined in section 4001(a)(14) of such Act) which are covered by title IV of such Act (disregarding plans with no unfunded benefits) exceed \$50,000,000; and

“(ii) the change in assumptions (determined after taking into account any changes in interest rate and mortality table) results in a decrease in the funding shortfall of the plan for the current plan year that exceeds \$50,000,000, or that exceeds \$5,000,000 and that is 5 percent or more of the funding target of the plan before such change.

“(i) SPECIAL RULES FOR AT-RISK PLANS.—

“(1) FUNDING TARGET FOR PLANS IN AT-RISK STATUS.—

“(A) IN GENERAL.—In the case of a plan to which this subsection applies for a plan year,

the funding target of the plan for the plan year is equal to the present value of all liabilities to participants and their beneficiaries under the plan for the plan year, as determined by using the additional actuarial assumptions described in subparagraph (B).

“(B) ADDITIONAL ACTUARIAL ASSUMPTIONS.—The actuarial assumptions described in this subparagraph are as follows:

“(i) All employees who are not otherwise assumed to retire as of the valuation date but who will be eligible to elect benefits during the plan year and the 7 succeeding plan years shall be assumed to retire at the earliest retirement date under the plan but not before the end of the plan year for which the at-risk target liability and at-risk target normal cost are being determined.

“(ii) All employees shall be assumed to elect the retirement benefit available under the plan at the assumed retirement age (determined after application of clause (i)) which would result in the highest present value of liabilities.

1           “(2) TARGET NORMAL COST OF AT-RISK  
 2 PLANS.—In the case of a plan to which this sub-  
 3 section applies for a plan year, the target normal  
 4 cost of the plan for such plan year shall be equal to  
 5 the present value of all benefits which are expected  
 6 to accrue or be earned under the plan during the  
 7 plan year, determined using the additional actuarial  
 8 assumptions described in paragraph (1)(B).

9           “(3) MINIMUM AMOUNT.—In no event shall—  
 10           “(A) the at-risk target liability be less than  
 11 the target liability, as determined without re-  
 12 gard to this subsection, or

13           “(B) the at-risk target normal cost be less  
 14 than the target normal cost, as determined  
 15 without regard to this subsection.

16           “(4) DETERMINATION OF AT-RISK STATUS.—  
 17 For purposes of this subsection, a plan is in at-risk  
 18 status for a plan year if—

19           “(A) the plan is maintained by a finan-  
 20 cially-weak employer, and

21           “(B) the funding target attainment per-  
 22 centage for the plan year is less than 93 per-  
 23 cent.

24           “(5) FINANCIALLY-WEAK EMPLOYER.—

1           “(A) IN GENERAL.—For purposes of this  
 2 subsection, the term ‘financially-weak employer’  
 3 means any employer if—

4           “(i) as of the valuation date for each  
 5 of the years during a period of at least 3  
 6 consecutive plan years ending with the  
 7 plan year—

8           “(I) the employer has an out-  
 9 standing senior unsecured debt instru-  
 10 ment which is rated lower than invest-  
 11 ment grade by each of the nationally  
 12 recognized statistical rating organiza-  
 13 tions for corporate bonds that has  
 14 issued a credit rating for such instru-  
 15 ment, or

16           “(II) if no such debt instrument  
 17 has been rated by such an organiza-  
 18 tion but 1 or more of such organiza-  
 19 tions has made an issuer credit rating  
 20 for such employer, all such organiza-  
 21 tions which have so rated the em-  
 22 ployer have rated such employer lower  
 23 than investment grade, and

24           “(ii) at least 2 of the years during  
 25 such period are deterioration years.



1 If an employer is treated as a financially-weak  
2 employer for any plan year, clause (ii) shall not  
3 apply in determining whether the employer is so  
4 treated for any succeeding plan year in any  
5 continuous period of plan years for which the  
6 employer is treated as a financially-weak em-  
7 ployer.

8 “(B) CONTROLLED GROUP EXCEPTION.—

9 If an employer treated as a financially-weak  
10 employer under subparagraph (A) is a member  
11 of a controlled group (as defined in section  
12 412(e)(4)), the employer shall not be treated as  
13 a financially-weak employer if a significant  
14 member (as determined under regulations pre-  
15 scribed by the Secretary) of such group has an  
16 outstanding senior unsecured debt instrument  
17 that is rated as being investment grade by an  
18 organization described in subparagraph (A).

19 “(C) EMPLOYERS WITH NO RATINGS.—

20 If—

21 “(i) an employer has no debt instru-  
22 ment described in subparagraph (A)(i)  
23 which was rated by an organization de-  
24 scribed in such subparagraph, and

1                   “(ii) no such organization has made  
 2                   an issuer credit rating for such employer,  
 3                   then such employer shall only be treated as a  
 4                   financially-weak employer to the extent provided  
 5                   in regulations prescribed by the Secretary.

6                   “(6) DETERMINATION OF DETERIORATION  
 7                   YEAR.—For purposes of paragraph (5), the term  
 8                   ‘deterioration year’ means any year during the pe-  
 9                   riod described in paragraph (5)(A)(i) for which the  
 10                   rating described in subclause (I) or (II) of para-  
 11                   graph (5)(A)(i) by each organization is either—

12                   “(A) lower than the lowest rating of the  
 13                   employer by such organization for a preceding  
 14                   year in such period, or

15                   “(B) the lowest rating used by such orga-  
 16                   nization.

17                   “(7) YEARS BEFORE EFFECTIVE DATE.—For  
 18                   purposes of paragraphs (5) and (6), plan years be-  
 19                   ginning before 2007 shall not be taken into account.

20                   “(8) TRANSITION BETWEEN APPLICABLE FUND-  
 21                   ING TARGETS AND BETWEEN APPLICABLE TARGET  
 22                   NORMAL COSTS.—

23                   “(A) IN GENERAL.—In any case in which  
 24                   a plan which is in at-risk status for a plan year  
 25                   has been in such status for a consecutive period

1 of fewer than 5 plan years, the applicable  
 2 amount of the funding target and of the target  
 3 normal cost shall be, in lieu of the amount de-  
 4 termined without regard to this paragraph, the  
 5 sum of—

6 “(i) the amount determined under this  
 7 section without regard to this subsection,  
 8 plus

9 “(ii) the transition percentage for  
 10 such plan year of the excess of the amount  
 11 determined under this subsection (without  
 12 regard to this paragraph) over the amount  
 13 determined under this section without re-  
 14 gard to this subsection.

15 “(B) IMPROVEMENT YEARS NOT TAKEN  
 16 INTO ACCOUNT.—

17 “(i) IN GENERAL.—An improvement  
 18 year shall not be taken into account in de-  
 19 termining any consecutive period of plan  
 20 years for purposes of subparagraph (A).

21 “(ii) APPLICATION OF SUBSECTION  
 22 AFTER IMPROVEMENT YEAR ENDS.—Plan  
 23 years immediately before and after an im-  
 24 provement year (or consecutive period of  
 25 improvement years) shall be treated as

1 consecutive for purposes of subparagraph  
2 (A).

3 “(iii) IMPROVEMENT YEAR.—For pur-  
4 poses of this subparagraph, the term ‘im-  
5 provement year’ means any plan year for  
6 which any rating described in subclause (I)  
7 or (II) of paragraph (5)(A)(i) is higher  
8 than such rating for the preceding plan  
9 year.

10 “(C) TRANSITION PERCENTAGE.—For pur-  
11 poses of subparagraph (A), the transition per-  
12 centage shall be determined in accordance with  
13 the following table:

<b>“If the consecutive number of years (including the plan year) the plan is in at-risk status is—</b>	<b>The transition percentage is—</b>
1 .....	20
2 .....	40
3 .....	60
4 .....	80.

14 “(D) YEARS BEFORE EFFECTIVE DATE.—  
15 For purposes of this paragraph, plan years be-  
16 ginning before 2007 shall not be taken into ac-  
17 count.

18 “(9) PLANS TO WHICH SUBSECTION APPLIES.—

19 “(A) IN GENERAL.—Except as provided in  
20 this paragraph, this subsection shall apply to  
21 any plan to which this section applies and  
22 which is in at-risk status for the plan year.

1 “(B) EXCEPTION FOR SMALL PLANS.—

2 This subsection shall not apply to a plan for a  
3 plan year if the plan was described in sub-  
4 section (g)(2)(B) for the preceding plan year,  
5 determined by substituting ‘500’ for ‘100’.

6 “(C) EXCEPTION FOR PLANS MAINTAINED  
7 BY CERTAIN COOPERATIVES.—This subsection  
8 shall not apply to an eligible cooperative plan  
9 described in subparagraph (D).

10 “(D) ELIGIBLE COOPERATIVE PLAN DE-  
11 FINED.—For purposes of subparagraph (C), a  
12 plan shall be treated as an eligible cooperative  
13 plan for a plan year if the plan is maintained  
14 by more than 1 employer and at least 85 per-  
15 cent of the employers are—

16 “(i) rural cooperatives (as defined in  
17 section 401(k)(7)(B) without regard to  
18 clause (iv) thereof), or

19 “(ii) organizations which are—

20 “(I) cooperative organizations de-  
21 scribed in section 1381(a) which are  
22 more than 50-percent owned by agri-  
23 cultural producers or by cooperatives  
24 owned by agricultural producers, or

1 “(II) more than 50-percent  
 2 owned, or controlled by, one or more  
 3 cooperative organizations described in  
 4 subclause (I).

5 A plan shall also be treated as an eligible coop-  
 6 erative plan for any plan year for which it is de-  
 7 scribed in section 210(a) of the Employee Re-  
 8 tirement Income Security Act of 1974 and is  
 9 maintained by a rural telephone cooperative as-  
 10 sociation described in section 3(40)(B)(v) of  
 11 such Act.

12 “(E) EXCEPTION FOR PLANS SECURED BY  
 13 THIRD PARTIES BOUND BY PBGC AGREE-  
 14 MENTS.—This subsection shall not apply to any  
 15 plan if—

16 “(i) a person other than the employer  
 17 obligated to contribute under the plan is,  
 18 under the terms of an agreement with the  
 19 Pension Benefit Guaranty Corporation, lia-  
 20 ble for any failure of the employer to meet  
 21 its obligation to pay any minimum required  
 22 contribution or termination liability with  
 23 respect to the plan; and

24 “(ii) such person is not a financially-  
 25 weak employer under paragraph (5).

1       “(j) PAYMENT OF MINIMUM REQUIRED CONTRIBU-  
2   TIONS.—

3               “(1) IN GENERAL.—For purposes of this sec-  
4   tion, the due date for any payment of any minimum  
5   required contribution for any plan year shall be 8½  
6   months after the close of the plan year.

7               “(2) INTEREST.—Any payment required under  
8   paragraph (1) for a plan year made after the valu-  
9   ation date for such plan year shall be increased by  
10   interest for the period from the valuation date to the  
11   payment date, determined by using the effective rate  
12   of interest for the plan for such plan year.

13              “(3) ACCELERATED QUARTERLY CONTRIBUTION  
14   SCHEDULE FOR UNDERFUNDED PLANS.—

15                   “(A) INTEREST PENALTY FOR FAILURE TO  
16               MEET ACCELERATED QUARTERLY PAYMENT  
17               SCHEDULE.—A plan shall make the required in-  
18               stallments under this paragraph for a plan year  
19               if the plan had a funding shortfall for the pre-  
20               ceding plan year. If the required installment is  
21               not paid in full, then the minimum required  
22               contribution for the plan year (as increased  
23               under paragraph (2)) shall be further increased  
24               by an amount equal to the interest on the  
25               amount of the underpayment for the period of

the underpayment, using an interest rate equal to the excess of—

“(i) 175 percent of the Federal mid-term rate (as in effect under section 1274 for the 1st month of such plan year), over

“(ii) the effective rate of interest for the plan for the plan year.

“(B) AMOUNT OF UNDERPAYMENT, PERIOD OF UNDERPAYMENT.—For purposes of subparagraph (A)—

“(i) AMOUNT.—The amount of the underpayment shall be the excess of—

“(I) the required installment, over

“(II) the amount (if any) of the installment contributed to or under the plan on or before the due date for the installment.

“(ii) PERIOD OF UNDERPAYMENT.—The period for which any interest is charged under this paragraph with respect to any portion of the underpayment shall run from the due date for the installment to the date on which such portion is contributed to or under the plan.



1                   “(iii) ORDER OF CREDITING CON-  
 2                   TRIBUTIONS.—For purposes of clause  
 3                   (i)(II), contributions shall be credited  
 4                   against unpaid required installments in the  
 5                   order in which such installments are re-  
 6                   quired to be paid.

7                   “(C) NUMBER OF REQUIRED INSTALL-  
 8                   MENTS; DUE DATES.—For purposes of this  
 9                   paragraph—

10                   “(i) PAYABLE IN 4 INSTALLMENTS.—  
 11                   There shall be 4 required installments for  
 12                   each plan year.

13                   “(ii) TIME FOR PAYMENT OF IN-  
 14                   STALLMENTS.—The due dates for required  
 15                   installments are set forth in the following  
 16                   table:

**In the case of the following required in-  
 stallment:**

1st .....	April 15
2nd .....	July 15
3rd .....	October 15
4th .....	January 15 of the fol- lowing year.

**The due date is:**

17                   “(D) AMOUNT OF REQUIRED INSTALL-  
 18                   MENT.—For purposes of this paragraph—

19                   “(i) IN GENERAL.—The amount of  
 20                   any required installment shall be 25 per-  
 21                   cent of the required annual payment.

1 “(ii) REQUIRED ANNUAL PAYMENT.—

2 For purposes of clause (i), the term ‘re-  
3 quired annual payment’ means the lesser  
4 of—

5 “(I) 90 percent of the minimum  
6 required contribution (without regard  
7 to any waiver under section 302(c)) to  
8 the plan for the plan year under this  
9 section, or

10 “(II) in the case of a plan year  
11 beginning after 2007, 100 percent of  
12 the minimum required contribution  
13 (without regard to any waiver under  
14 section 302(c)) to the plan for the  
15 preceding plan year.

16 Subclause (II) shall not apply if the pre-  
17 ceding plan year referred to in such clause  
18 was not a year of 12 months.

19 “(E) FISCAL YEARS AND SHORT YEARS.—

20 “(i) FISCAL YEARS.—In applying this  
21 paragraph to a plan year beginning on any  
22 date other than January 1, there shall be  
23 substituted for the months specified in this  
24 paragraph, the months which correspond  
25 thereto.

1                   “(ii) SHORT PLAN YEAR.—This sub-  
 2                   paragraph shall be applied to plan years of  
 3                   less than 12 months in accordance with  
 4                   regulations prescribed by the Secretary of  
 5                   the Treasury.

6                   “(4) LIQUIDITY REQUIREMENT IN CONNECTION  
 7                   WITH QUARTERLY CONTRIBUTIONS.—

8                   “(A) IN GENERAL.—A plan to which this  
 9                   paragraph applies shall be treated as failing to  
 10                  pay the full amount of any required installment  
 11                  under paragraph (3) to the extent that the  
 12                  value of the liquid assets paid in such install-  
 13                  ment is less than the liquidity shortfall (wheth-  
 14                  er or not such liquidity shortfall exceeds the  
 15                  amount of such installment required to be paid  
 16                  but for this paragraph).

17                  “(B) PLANS TO WHICH PARAGRAPH AP-  
 18                  PLIES.—This paragraph shall apply to a plan  
 19                  which—

20                         “(i) is required to pay installments  
 21                         under paragraph (3) for a plan year, and

22                         “(ii) has a liquidity shortfall for any  
 23                         quarter during such plan year.

24                         “(C) PERIOD OF UNDERPAYMENT.—For  
 25                         purposes of paragraph (3)(A), any portion of an

installment that is treated as not paid under subparagraph (A) shall continue to be treated as unpaid until the close of the quarter in which the due date for such installment occurs.

“(D) LIMITATION ON INCREASE.—If the amount of any required installment is increased by reason of subparagraph (A), in no event shall such increase exceed the amount which, when added to prior installments for the plan year, is necessary to increase the funding target attainment percentage of the plan for the plan year (taking into account the expected increase in funding target due to benefits accruing or earned during the plan year) to 100 percent.

“(E) DEFINITIONS.—For purposes of this subparagraph:

“(i) LIQUIDITY SHORTFALL.—The term ‘liquidity shortfall’ means, with respect to any required installment, an amount equal to the excess (as of the last day of the quarter for which such installment is made) of—

“(I) the base amount with respect to such quarter, over

1 “(II) the value (as of such last  
2 day) of the plan’s liquid assets.

3 “(ii) BASE AMOUNT.—

4 “(I) IN GENERAL.—The term  
5 ‘base amount’ means, with respect to  
6 any quarter, an amount equal to 3  
7 times the sum of the adjusted dis-  
8 bursements from the plan for the 12  
9 months ending on the last day of such  
10 quarter.

11 “(II) SPECIAL RULE.—If the  
12 amount determined under subclause  
13 (I) exceeds an amount equal to 2  
14 times the sum of the adjusted dis-  
15 bursements from the plan for the 36  
16 months ending on the last day of the  
17 quarter and an enrolled actuary cer-  
18 tifies to the satisfaction of the Sec-  
19 retary that such excess is the result of  
20 nonrecurring circumstances, the base  
21 amount with respect to such quarter  
22 shall be determined without regard to  
23 amounts related to those nonrecurring  
24 circumstances.

1           “(iii) DISBURSEMENTS FROM THE  
 2 PLAN.—The term ‘disbursements from the  
 3 plan’ means all disbursements from the  
 4 trust, including purchases of annuities,  
 5 payments of single sums and other bene-  
 6 fits, and administrative expenses.

7           “(iv) ADJUSTED DISBURSEMENTS.—  
 8 The term ‘adjusted disbursements’ means  
 9 disbursements from the plan reduced by  
 10 the product of—

11               “(I) the plan’s funding target at-  
 12 tainment percentage for the plan year,  
 13 and

14               “(II) the sum of the purchases of  
 15 annuities, payments of single sums,  
 16 and such other disbursements as the  
 17 Secretary shall provide in regulations.

18           “(v) LIQUID ASSETS.—The term ‘liq-  
 19 uid assets’ means cash, marketable securi-  
 20 ties, and such other assets as specified by  
 21 the Secretary in regulations.

22           “(vi) QUARTER.—The term ‘quarter’  
 23 means, with respect to any required install-  
 24 ment, the 3-month period preceding the

1 month in which the due date for such in-  
 2 stallment occurs.

3 “(F) REGULATIONS.—The Secretary may  
 4 prescribe such regulations as are necessary to  
 5 carry out this paragraph.

6 “(k) IMPOSITION OF LIEN WHERE FAILURE TO  
 7 MAKE REQUIRED CONTRIBUTIONS.—

8 “(1) IN GENERAL.—In the case of a plan to  
 9 which this subsection applies, if—

10 “(A) any person fails to make a contribu-  
 11 tion payment required by section 412 and this  
 12 section before the due date for such payment,  
 13 and

14 “(B) the unpaid balance of such payment  
 15 (including interest), when added to the aggre-  
 16 gate unpaid balance of all preceding such pay-  
 17 ments for which payment was not made before  
 18 the due date (including interest), exceeds  
 19 \$1,000,000,

20 then there shall be a lien in favor of the plan in the  
 21 amount determined under paragraph (3) upon all  
 22 property and rights to property, whether real or per-  
 23 sonal, belonging to such person and any other per-  
 24 son who is a member of the same controlled group  
 25 of which such person is a member.

1 “(2) PLANS TO WHICH SUBSECTION APPLIES.—

2 This subsection shall apply to a defined benefit plan  
3 which is a single-employer plan covered under sec-  
4 tion 4021 of the Employee Retirement Income Secu-  
5 rity Act of 1974 for any plan year for which the  
6 funding target attainment percentage (as defined in  
7 subsection (d)(2)) of such plan is less than 100 per-  
8 cent.

9 “(3) AMOUNT OF LIEN.—For purposes of para-  
10 graph (1), the amount of the lien shall be equal to  
11 the aggregate unpaid balance of contribution pay-  
12 ments required under this section and section 302  
13 for which payment has not been made before the due  
14 date.

15 “(4) NOTICE OF FAILURE; LIEN.—

16 “(A) NOTICE OF FAILURE.—A person  
17 committing a failure described in paragraph (1)  
18 shall notify the Pension Benefit Guaranty Cor-  
19 poration of such failure within 10 days of the  
20 due date for the required contribution payment.

21 “(B) PERIOD OF LIEN.—The lien imposed  
22 by paragraph (1) shall arise on the due date for  
23 the required contribution payment and shall  
24 continue until the last day of the first plan year  
25 in which the plan ceases to be described in



1 paragraph (1)(B). Such lien shall continue to  
 2 run without regard to whether such plan con-  
 3 tinues to be described in paragraph (2) during  
 4 the period referred to in the preceding sentence.

5 “(C) CERTAIN RULES TO APPLY.—Any  
 6 amount with respect to which a lien is imposed  
 7 under paragraph (1) shall be treated as taxes  
 8 due and owing the United States and rules  
 9 similar to the rules of subsections (c), (d), and  
 10 (e) of section 4068 of the Employee Retirement  
 11 Income Security Act of 1974 shall apply with  
 12 respect to a lien imposed by subsection (a) and  
 13 the amount with respect to such lien.

14 “(5) ENFORCEMENT.—Any lien created under  
 15 paragraph (1) may be perfected and enforced only  
 16 by the Pension Benefit Guaranty Corporation, or at  
 17 the direction of the Pension Benefit Guaranty Cor-  
 18 poration, by the contributing sponsor (or any mem-  
 19 ber of the controlled group of the contributing spon-  
 20 sor).

21 “(6) DEFINITIONS.—For purposes of this  
 22 subsection—

23 “(A) CONTRIBUTION PAYMENT.—The term  
 24 ‘contribution payment’ means, in connection  
 25 with a plan, a contribution payment required to

1 be made to the plan, including any required in-  
 2 stallment under paragraphs (3) and (4) of sub-  
 3 section (j).

4 “(B) DUE DATE; REQUIRED INSTALL-  
 5 MENT.—The terms ‘due date’ and ‘required in-  
 6 stallment’ have the meanings given such terms  
 7 by subsection (j), except that in the case of a  
 8 payment other than a required installment, the  
 9 due date shall be the date such payment is re-  
 10 quired to be made under section 303.

11 “(C) CONTROLLED GROUP.—The term  
 12 ‘controlled group’ means any group treated as  
 13 a single employer under subsections (b), (c),  
 14 (m), and (o) of section 414.

15 “(I) QUALIFIED TRANSFERS TO HEALTH BENEFIT  
 16 ACCOUNTS.—In the case of a qualified transfer (as de-  
 17 fined in section 420), any assets so transferred shall not,  
 18 for purposes of this section, be treated as assets in the  
 19 plan.”.

20 (b) EFFECTIVE DATE.—The amendments made by  
 21 this section shall apply with respect to plan years begin-  
 22 ning after 2006.

1 **SEC. 113. BENEFIT LIMITATIONS UNDER SINGLE-EM-**  
 2 **PLOYER PLANS.**

3 (a) IN GENERAL.—Part III of subchapter D of chap-  
 4 ter 1 of the Internal Revenue Code of 1986 (relating to  
 5 rules relating to minimum funding standards) is amended  
 6 by adding at the end the following new subpart:

7 **“Subpart B—Limitations on Benefit Improvements**  
 8 **by Single-Employer Plans**

“Sec. 436. Funding-based limits on benefits and benefit accruals under  
 single-employer plans.

9 **“SEC. 436. FUNDING-BASED LIMITS ON BENEFITS AND BEN-**  
 10 **EFIT ACCRUALS UNDER SINGLE-EMPLOYER**  
 11 **PLANS.**

12 “(a) GENERAL RULE.—For purposes of section  
 13 401(a)(29), a defined benefit plan which is a single-em-  
 14 ployer plan shall be treated as meeting the requirements  
 15 of this section if the plan meets the requirements of sub-  
 16 sections (b), (c), and (d).

17 “(b) LIMITATIONS ON PLAN AMENDMENTS INCREAS-  
 18 ING LIABILITY FOR BENEFITS.—

19 “(1) IN GENERAL.—Except as provided in this  
 20 section, no amendment to a single-employer plan  
 21 which has the effect of increasing liabilities of the  
 22 plan by reason of increases in benefits, establish-  
 23 ment of new benefits, changing the rate of benefit  
 24 accrual, or changing the rate at which benefits be-

1       come nonforfeitable may take effect during any plan  
 2       year if the adjusted funding target attainment per-  
 3       centage as of the valuation date of the plan for such  
 4       plan year is—

5               “(A) less than 80 percent, or

6               “(B) would be less than 80 percent taking  
 7       into account such amendment.

8               “(2) EXEMPTION.—Paragraph (1) shall cease  
 9       to apply with respect to any plan year, effective as  
 10      of the first date of the plan year (or if later, the ef-  
 11      fective date of the amendment), upon payment by  
 12      the plan sponsor of a contribution (in addition to  
 13      any minimum required contribution under section  
 14      430) equal to—

15              “(A) in the case of paragraph (1)(A), the  
 16      amount of the increase in the funding target of  
 17      the plan (under section 430) for the plan year  
 18      attributable to the amendment, and

19              “(B) in the case of paragraph (1)(B), the  
 20      amount sufficient to result in a funding target  
 21      attainment percentage of 80 percent.

22              “(3) EXCEPTION FOR CERTAIN BENEFIT IN-  
 23      CREASES.—Paragraph (1) shall not apply to any  
 24      amendment which provides for an increase in bene-  
 25      fits under a formula which is not based on a partici-

1       pant’s compensation, but only if the rate of such in-  
 2       crease is not in excess of the contemporaneous rate  
 3       of increase in average wages of participants covered  
 4       by the amendment.

5       “(c) LIMITATIONS ON ACCELERATED BENEFIT DIS-  
 6       TRIBUTIONS.—

7               “(1) IN GENERAL.—The requirements of this  
 8       subsection are met if the plan provides that, with re-  
 9       spect to any plan year—

10               “(A) if the plan’s adjusted funded target  
 11       liability percentage as of the valuation date for  
 12       the preceding plan year was less than 60 per-  
 13       cent and the preceding plan year is not other-  
 14       wise in a prohibited period, the plan sponsor  
 15       shall, in addition to any other contribution re-  
 16       quired under section 430, contribute for the  
 17       current plan year and each succeeding plan  
 18       year in the prohibited period with respect to the  
 19       current plan year the amount (if any) which,  
 20       when added to the portion of the minimum re-  
 21       quired contribution for the plan year described  
 22       in subparagraphs (B) and (C) of section  
 23       430(a)(1), is sufficient to result in an adjusted  
 24       funded target liability percentage for the plan  
 25       year of 60 percent, and

1           “(B) no prohibited payments will be made  
2           during a prohibited period.

3           “(2) PROHIBITED PAYMENT.—For purpose of  
4           this subsection—

5           “(A) IN GENERAL.—The term ‘prohibited  
6           payment’ means—

7                   “(i) any payment, in excess of the  
8                   monthly amount paid under a single life  
9                   annuity (plus any social security supple-  
10                  ments described in the last sentence of sec-  
11                  tion 411(a)(9)), to a participant or bene-  
12                  ficiary whose annuity starting date (as de-  
13                  fined in section 417(f)(2)) occurs during a  
14                  prohibited period,

15                   “(ii) any payment for the purchase of  
16                   an irrevocable commitment from an insurer  
17                   to pay benefits, and

18                   “(iii) any other payment specified by  
19                   the Secretary by regulations.

20           “(B) EXCEPTION FOR CERTAIN PAY-  
21           MENTS.—In the case of any prohibited period  
22           described in paragraph (3)(A), the term ‘pro-  
23           hibited payment’ shall not include any payment  
24           if the amount of the payment does not exceed  
25           the lesser of—

1 “(i) 50 percent of the amount of the  
 2 payment which could be made without re-  
 3 gard to this subsection, or

4 “(ii) the present value (determined  
 5 under guidance prescribed by the Pension  
 6 Benefit Guaranty Corporation, using the  
 7 interest and mortality assumptions under  
 8 section 417(e)) of the maximum guarantee  
 9 with respect to the participant under sec-  
 10 tion 4022 of the Employee Retirement In-  
 11 come Security Act of 1974.

12 The exception under this subparagraph shall  
 13 only apply once with respect to any participant,  
 14 except that, for purposes of this sentence, a  
 15 participant and any beneficiary on his behalf  
 16 (including an alternate payee, as defined in sec-  
 17 tion 414(p)(8)) shall be treated as 1 partici-  
 18 pant. If the accrued benefit of a participant is  
 19 allocated to such an alternate payee and 1 or  
 20 more other persons, the amount under clause  
 21 (ii) shall be allocated among such persons in  
 22 the same manner as the accrued benefit is allo-  
 23 cated unless the qualified domestic relations  
 24 order (as defined in section 414(p)(1)(A)) pro-  
 25 vides otherwise.

1           “(3) PROHIBITED PERIOD.—For purposes of  
2 paragraph (1), the term ‘prohibited period’ means—

3           “(A) except as provided in paragraph (4),  
4 if a plan sponsor is required to make the con-  
5 tribution for the current plan year under para-  
6 graph (1), the period beginning on the 1st day  
7 of the plan year and ending on the last day of  
8 the 1st period of 2 consecutive plan years (be-  
9 ginning on or after such 1st day) for which the  
10 plan’s adjusted funded target liability percent-  
11 age was at least 60 percent,

12           “(B) any period the plan sponsor is in  
13 bankruptcy, or

14           “(C) any period during which the plan has  
15 a liquidity shortfall (as defined in section  
16 430(j)(4)(E)(i)).

17 The prohibited period for purposes of subparagraph  
18 (B) shall not include any portion of a plan year  
19 (even if the plan sponsor is in bankruptcy during  
20 such period) which occurs on or after the date the  
21 plan’s enrolled actuary certifies that, as of the valu-  
22 ation date for the plan year, the plan’s adjusted  
23 funded target liability percentage is at least 100 per-  
24 cent.



1           “(4) SATISFACTION OF REQUIREMENT BEFORE  
2           CLOSE OF PLAN YEAR.—If, before the close of the  
3           current plan year—

4                   “(A) the plan sponsor makes the contribu-  
5                   tion required to be made under paragraph (1),  
6                   or

7                   “(B) the plan’s enrolled actuary certifies  
8                   that, as of the valuation date for the plan year,  
9                   the adjusted funded target liability percentage  
10                  of the plan is at least 60 percent,

11           this subsection shall be applied as if no prohibited  
12           period had begun as of the beginning of such year  
13           and the plan shall, under rules described by the Sec-  
14           retary, restore any payments not made during the  
15           prohibited period in effect before the application of  
16           this paragraph.

17           “(d) LIMITATION ON BENEFIT ACCRUALS FOR  
18           PLANS WITH SEVERE FUNDING SHORTFALLS.—

19                   “(1) IN GENERAL.—Except as provided in sub-  
20                   section (e), a single-employer plan shall provide that  
21                   all future benefit accruals under the plan shall cease  
22                   during a severe funding shortfall period, but only to  
23                   the extent the cessation of such accruals would have  
24                   been permitted under section 411(d)(6) if the ces-  
25                   sation had been implemented by a plan amendment

1       adopted immediately before the severe funding short-  
2       fall period.

3               “(2) SEVERE FUNDING SHORTFALL PERIOD.—

4       For purposes of paragraph (1), the term ‘severe  
5       funding shortfall period’ means in the case of a plan  
6       the adjusted funding target attainment percentage  
7       of which as of the valuation date of the plan for any  
8       plan year is less than 60 percent, the period—

9               “(A) beginning on the 1st day of the suc-  
10       ceeding plan year, and

11              “(B) ending on the date the plan’s enrolled  
12       actuary certifies that the plan’s funding target  
13       attainment percentage is at least 60 percent.

14              “(3) OPPORTUNITY FOR INCREASED FUND-  
15       ING.—For purposes of paragraph (2)(A), a plan  
16       shall not be treated as described in such paragraph  
17       for a plan year if the plan’s enrolled actuary certifies  
18       that the plan sponsor has before the end of the plan  
19       year contributed (in addition to any minimum re-  
20       quired contribution under section 430) the amount  
21       sufficient to result in an adjusted funding target at-  
22       tainment percentage as of the valuation date for the  
23       plan year of 60 percent.

24              “(e) EXCEPTION FOR CERTAIN COLLECTIVELY BAR-  
25       GAINED BENEFITS.—In the case of a plan maintained

1 pursuant to a collective bargaining agreement between em-  
 2 ployee representatives and the plan sponsor and in effect  
 3 before the beginning of the first day on which a limitation  
 4 would otherwise apply under subsections (b), (c), or (d)—

5           “(1) such limitations shall not apply to any  
 6 amendment, prohibited payment, or accrual with re-  
 7 spect to such plan, but

8           “(2) the plan sponsor shall contribute (in addi-  
 9 tion to any minimum required contribution under  
 10 section 430) the amount sufficient to result in a  
 11 funding target attainment percentage (as of the  
 12 valuation date for the plan year in which any such  
 13 limitation would otherwise apply) equal to the per-  
 14 centage necessary to prevent the limitation from ap-  
 15 plying.

16       “(f) RULES RELATING TO REQUIRED CONTRIBU-  
 17 TIONS.—

18           “(1) SECURITY MAY BE PROVIDED.—

19           “(A) IN GENERAL.—For purposes of this  
 20 section, the adjusted funding target attainment  
 21 percentage shall be determined by treating as  
 22 an asset of the plan any security provided by a  
 23 plan sponsor in a form meeting the require-  
 24 ments of subparagraph (B) .

1           “(B) FORM OF SECURITY.—The security  
2           required under subparagraph (A) shall consist  
3           of—

4                   “(i) a bond issued by a corporate sur-  
5                   ety company that is an acceptable surety  
6                   for purposes of section 412 of the Em-  
7                   ployee Retirement Income Security Act of  
8                   1974,

9                   “(ii) cash, or United States obliga-  
10                  tions which mature in 3 years or less, held  
11                  in escrow by a bank or similar financial in-  
12                  stitution, or

13                  “(iii) such other form of security as is  
14                  satisfactory to the Secretary and the par-  
15                  ties involved.

16           “(C) ENFORCEMENT.—Any security pro-  
17           vided under subparagraph (A) may be perfected  
18           and enforced at any time after the earlier of—

19                   “(i) the date on which the plan termi-  
20                   nates,

21                   “(ii) if there is a failure to make a  
22                   payment of the minimum required con-  
23                   tribution for any plan year beginning after  
24                   the security is provided, the due date for  
25                   the payment under section 430(j), or

1                   “(iii) if the adjusted funding target  
2                   attainment percentage is less than 60 per-  
3                   cent for a consecutive period of 7 years,  
4                   the valuation date for the last year in the  
5                   period.

6                   “(D) RELEASE OF SECURITY.—The secu-  
7                   rity shall be released (and any amounts there-  
8                   under shall be refunded together with any inter-  
9                   est accrued thereon) at such time as the Sec-  
10                  retary may prescribe in regulations, including  
11                  regulations for partial releases of the security  
12                  by reason of increases in the funding target at-  
13                  tainment percentage.

14                  “(2) PREFUNDING BALANCE MAY NOT BE  
15                  USED.—No prefunding balance under section 430(f)  
16                  may be used to satisfy any required contribution  
17                  under this section.

18                  “(3) TREATMENT AS UNPAID MINIMUM RE-  
19                  QUIRED CONTRIBUTION.—The amount of any re-  
20                  quired contribution which a plan sponsor fails to  
21                  make under subsection (b) or (d) for any plan year  
22                  shall be treated as an unpaid minimum required  
23                  contribution for purposes of subsection (j) and (k) of  
24                  section 430 and for purposes of section 4971.

1       “(g) NEW PLANS.—Subsections (b) and (d) shall not  
 2 apply to a plan for the first 5 plan years of the plan. For  
 3 purposes of this subsection, the reference in this sub-  
 4 section to a plan shall include a reference to any prede-  
 5 cessor plan.

6       “(h) PRESUMED UNDERFUNDING FOR PURPOSES OF  
 7 BENEFIT LIMITATIONS BASED ON PRIOR YEAR’S FUND-  
 8 ING STATUS.—

9               “(1) PRESUMPTION OF CONTINUED UNDER-  
 10 FUNDING.—In any case in which a benefit limitation  
 11 under subsection (b), (c), or (d) has been applied to  
 12 a plan with respect to the plan year preceding the  
 13 current plan year, the adjusted funding target at-  
 14 tainment percentage of the plan as of the valuation  
 15 date of the plan for the current plan year shall be  
 16 presumed to be equal to the adjusted funding target  
 17 attainment percentage of the plan as of the valu-  
 18 ation date of the plan for the preceding plan year  
 19 until the enrolled actuary of the plan certifies the  
 20 actual adjusted funding target attainment percent-  
 21 age of the plan as of the valuation date of the plan  
 22 for the current plan year.

23               “(2) PRESUMPTION OF UNDERFUNDING AFTER  
 24 10TH MONTH.—In any case in which no such certifi-  
 25 cation is made with respect to the plan before the

1 first day of the 10th month of the current plan year,  
 2 for purposes of subsections (b), (c), and (d), the  
 3 plan's adjusted funding target attainment percent-  
 4 age shall be conclusively presumed to be less than 60  
 5 percent as of the first day of such 10th month.

6 “(i) TREATMENT OF PLAN AS OF CLOSE OF PROHIB-  
 7 ITED OR CESSATION PERIOD.—For purposes of applying  
 8 this part—

9 “(1) OPERATION OF PLAN AFTER PERIOD.—  
 10 Unless the plan provides otherwise, payments and  
 11 accruals will resume effective as of the day following  
 12 the close of a period of limitation of payment or ac-  
 13 crual of benefits under subsection (c) or (d).

14 “(2) TREATMENT OF AFFECTED BENEFITS.—  
 15 Nothing in this subsection shall be construed as af-  
 16 fecting the plan's treatment of benefits which would  
 17 have been paid or accrued but for this section.

18 “(j) FUNDING TARGET ATTAINMENT PERCENT-  
 19 AGE.—For purposes of this section—

20 “(1) IN GENERAL.—The term ‘funding target  
 21 attainment percentage’ has the same meaning given  
 22 such term by section 430(d)(2).

23 “(2) ADJUSTED FUNDED TARGET LIABILITY  
 24 PERCENTAGE.—The term ‘adjusted funded target li-  
 25 ability percentage’ means the funded target liability

percentage which is determined under subparagraph (A) by increasing each of the amounts under subparagraphs (A) and (B) of section 430(d)(2) by the aggregate amount of purchases of annuities, payments of single sums, and such other disbursements as the Secretary shall prescribe in regulations, which were made by the plan during the preceding 2 plan years.

“(k) SPECIAL RULES.—

“(1) BANKRUPTCY.—In the case of a plan sponsor during any period the plan is in bankruptcy—

“(A) subsection (b) shall be applied by substituting ‘100 percent’ for ‘80 percent’ each place it appears,

“(B) any exception under subsection (b) for any benefit increases pursuant to a collective bargaining agreement shall not apply, and

“(C) the exception under subsection (f) shall not apply for purposes of subsection (b).

“(2) YEARS BEFORE EFFECTIVE DATE.—No plan year beginning before 2007 shall be taken into account in determining whether this section applies to any plan year beginning after 2006.”.

(b) EFFECTIVE DATES.—



1           (1) IN GENERAL.—The amendments made by  
 2           this section shall apply to plan years beginning after  
 3           December 31, 2006.

4           (2) COLLECTIVE BARGAINING EXCEPTION.—In  
 5           the case of a plan maintained pursuant to 1 or more  
 6           collective bargaining agreements between employee  
 7           representatives and 1 or more employers ratified be-  
 8           fore January 1, 2007, the amendments made by this  
 9           section shall not apply to plan years beginning be-  
 10          fore the earlier of—

11                   (A) the later of—

12                           (i) the date on which the last collec-  
 13                           tive bargaining agreement relating to the  
 14                           plan terminates (determined without re-  
 15                           gard to any extension thereof agreed to  
 16                           after the date of the enactment of this  
 17                           Act), or

18                           (ii) the first day of the first plan year  
 19                           to which the amendments made by this  
 20                           subsection would (but for this subpara-  
 21                           graph) apply, or

22                   (B) January 1, 2010.

23           For purposes of subparagraph (A)(i), any plan  
 24           amendment made pursuant to a collective bargaining  
 25           agreement relating to the plan which amends the

1 plan solely to conform to any requirement added by  
 2 this section shall not be treated as a termination of  
 3 such collective bargaining agreement.

4 **SEC. 114. INCREASE IN DEDUCTION LIMIT FOR SINGLE-EM-**  
 5 **PLOYER PLANS.**

6 (a) IN GENERAL.—Section 404 of the Internal Rev-  
 7 enue Code of 1986 (relating to deduction for contributions  
 8 of an employer to an employees’ trust or annuity plan and  
 9 compensation under a deferred payment plan) is  
 10 amended—

11 (1) in subsection (a)(1)(A), by inserting “in the  
 12 case of a defined benefit plan other than a multiem-  
 13 ployer plan, in an amount determined under sub-  
 14 section (o), and in the case of any other plan” after  
 15 “section 501(a),”, and

16 (2) by inserting at the end the following new  
 17 subsection:

18 “(o) DEDUCTION LIMIT FOR SINGLE-EMPLOYER  
 19 PLANS.—For purposes of subsection (a)(1)(A)—

20 “(1) IN GENERAL.—In the case of a defined  
 21 benefit plan to which subsection (a)(1)(A) applies  
 22 (other than a multiemployer plan), the amount de-  
 23 termined under this subsection for any taxable year  
 24 shall be equal to the greater of—

1           “(A) the sum of the amounts determined  
2           under paragraph (2) with respect to each plan  
3           year ending with or within the taxable year, or

4           “(B) the sum of the minimum required  
5           contributions under section 430 for such plan  
6           years.

7           “(2) DETERMINATION OF AMOUNT.—

8           “(A) IN GENERAL.—The amount deter-  
9           mined under this paragraph for any plan year  
10          shall be equal to the excess (if any) of—

11          “(i) the sum of—

12                  “(I) the funding target for the  
13                  plan year,

14                  “(II) the target normal cost for  
15                  the plan year, and

16                  “(III) the cushion amount for the  
17                  plan year, over

18                  “(ii) the value (determined under sec-  
19                  tion 430(g)(2)) of the assets of the plan  
20                  which are held by the plan as of the valu-  
21                  ation date for the plan year.

22          “(B) SPECIAL RULE FOR CERTAIN EM-  
23          PLOYERS.—If section 430(i) does not apply to  
24          a plan for a plan year, the amount determined

1 under subparagraph (A)(i) for the plan year  
2 shall in no event be less than the sum of—

3 “(i) the funding target for the plan  
4 year (determined as if section 430(i) ap-  
5 plied to the plan), plus

6 “(ii) the target normal cost for the  
7 plan year (as so determined).

8 “(3) CUSHION AMOUNT.—For purposes of para-  
9 graph (2)(A)(i)(III)—

10 “(A) IN GENERAL.—The cushion amount  
11 for any plan year is the sum of—

12 “(i) 80 percent of the funding target  
13 for the plan year, and

14 “(ii) the amount by which the funding  
15 target for the plan year would increase if  
16 the plan were to take into account—

17 “(I) increases in compensation  
18 which are expected to occur in suc-  
19 ceeding plan years, or

20 “(II) if the plan does not base  
21 benefits for service to date on com-  
22 pensation, increases in benefits which  
23 are expected to occur in succeeding  
24 plan years (determined on the basis of  
25 the average annual increase in bene-

1 fits over the 6 immediately preceding  
2 plan years).

3 “(B) LIMITATIONS.—

4 “(i) IN GENERAL.—In making the  
5 computation under subparagraph (A)(ii),  
6 the plan’s actuary shall assume that the  
7 limitations under subsection (l) and section  
8 415(b) shall apply.

9 “(ii) EXPECTED INCREASES.—In the  
10 case of a plan year during which a plan is  
11 covered under section 4021 of the Em-  
12 ployee Retirement Income Security Act of  
13 1974, the plan’s actuary may, notwith-  
14 standing subsection (j) or (l), take into ac-  
15 count increases in the limitations which are  
16 expected to occur in succeeding plan years.

17 “(4) SPECIAL RULES FOR PLANS WITH 100 OR  
18 FEWER PARTICIPANTS.—

19 “(A) IN GENERAL.—For purposes of deter-  
20 mining the amount under paragraph (3) for any  
21 plan year, in the case of a plan which has 100  
22 or fewer participants for the plan year, the li-  
23 ability of the plan attributable to benefit in-  
24 creases for highly compensated employees (as  
25 defined in section 414(q)) resulting from a plan

1 amendment which is made or becomes effective,  
 2 whichever is later, within the last 2 years shall  
 3 not be taken into account in determining the  
 4 target liability.

5 “(B) RULE FOR DETERMINING NUMBER  
 6 OF PARTICIPANTS.—For purposes of deter-  
 7 mining the number of plan participants, all de-  
 8 fined benefit plans maintained by the same em-  
 9 ployer (or any member of such employer’s con-  
 10 trolled group (within the meaning of section  
 11 412(f)(4))) shall be treated as one plan, but  
 12 only participants of such member or employer  
 13 shall be taken into account.

14 “(5) SPECIAL RULE FOR TERMINATING  
 15 PLANS.—In the case of a plan which, subject to sec-  
 16 tion 4041 of the Employee Retirement Income Secu-  
 17 rity Act of 1974, terminates during the plan year,  
 18 the amount determined under paragraph (2) shall in  
 19 no event be less than the amount required to make  
 20 the plan sufficient for benefit liabilities (within the  
 21 meaning of section 4041(d) of such Act).

22 “(6) ACTUARIAL ASSUMPTIONS.—Any computa-  
 23 tion under this subsection for any plan year shall  
 24 use the same actuarial assumptions which are used  
 25 for the plan year under section 430.

1           “(7) DEFINITIONS.—Any term used in this sub-  
 2           section which is also used in section 430 shall have  
 3           the same meaning given such term by section 430.”.

4           (b) EXCEPTION FROM LIMITATION ON DEDUCTION  
 5 WHERE COMBINATION OF DEFINED CONTRIBUTION AND  
 6 DEFINED BENEFIT PLANS.—Section 404(a)(7)(C) of  
 7 such Code, as amended by this Act, is amended by adding  
 8 at the end the following new clause:

9                       “(iv) GUARANTEED PLANS.—In apply-  
 10                      ing this paragraph, any single-employer  
 11                      plan covered under section 4021 of the  
 12                      Employee Retirement Income Security Act  
 13                      of 1974 shall not be taken into account.”.

14           (c) TECHNICAL AND CONFORMING AMENDMENTS.—

15                   (1) The last sentence of section 404(a)(1)(A) of  
 16                   such Code is amended by striking “section 412”  
 17                   each place it appears and inserting “section 431”.

18                   (2) Section 404(a)(1)(B) of such Code is  
 19                   amended—

20                           (A) by striking “In the case of a plan” and  
 21                           inserting “In the case of a multiemployer plan”,

22                           (B) by striking “section 412(c)(7)” each  
 23                           place it appears and inserting “section  
 24                           431(c)(6)”.

1 (C) by striking “section 412(c)(7)(B)” and  
 2 inserting “section 431(c)(6)(A)(ii)”,

3 (D) by striking “section 412(c)(7)(A)” and  
 4 inserting “section 431(c)(6)(A)(i)”, and

5 (E) by striking “section 412” and insert-  
 6 ing “section 431”.

7 (3) Section 404(a)(7)(A) of such Code, as  
 8 amended by this Act, is amended—

9 (A) by adding at the end of subparagraph  
 10 (A) the following new sentence: “In the case of  
 11 a defined benefit plan which is a single em-  
 12 ployer plan, the amount necessary to satisfy the  
 13 minimum funding standard provided by section  
 14 412 shall not be less than the plan’s funding  
 15 shortfall determined under section 430.”, and

16 (B) by striking subparagraph (D) and in-  
 17 serting:

18 “(D) INSURANCE CONTRACT PLANS.—For  
 19 purposes of this paragraph, a plan described in  
 20 section 412(g)(3) shall be treated as a defined  
 21 benefit plan.”.

22 (4) Section 404A(g)(3)(A) of such Code is  
 23 amended by striking “paragraphs (3) and (7) of sec-  
 24 tion 412(c)” and inserting “paragraphs (3) and (6)  
 25 of section 431(c)”.



1 (d) EFFECTIVE DATE.—The amendments made by  
 2 this section shall apply to plan years beginning after De-  
 3 cember 31, 2006.

4 **SEC. 115. TECHNICAL AND CONFORMING AMENDMENTS.**

5 (a) AMENDMENTS RELATED TO QUALIFICATION RE-  
 6 QUIREMENTS.—

7 (1) Section 401(a)(29) of the Internal Revenue  
 8 Code of 1986 is amended to read as follows:

9 “(29) BENEFIT LIMITATIONS ON PLANS IN AT-  
 10 RISK STATUS.—In the case of a defined benefit plan  
 11 (other than a multiemployer plan) to which the re-  
 12 quirements of section 412 apply, the trust of which  
 13 the plan is a part shall not constitute a qualified  
 14 trust under this subsection unless the plan meets the  
 15 requirements of section 436.”.

16 (2) Section 401(a)(32) of such Code is  
 17 amended—

18 (A) in subparagraph (A), by striking  
 19 “412(m)(5)” each place it appears and insert-  
 20 ing “section 430(j)(4)”, and

21 (B) in subparagraph (C), by striking “sec-  
 22 tion 412(m)” and inserting “section 430(j)”.

23 (3) Section 401(a), as amended by this Act, is  
 24 amended by striking paragraph (33) and by redesign-

1 nating paragraphs (34) and (35) as paragraph (33)  
 2 and (34).

3 (b) VESTING RULES.—Section 411 of such Code is  
 4 amended—

5 (1) by striking “section 412(c)(8)” in sub-  
 6 section (a)(3)(C) and inserting “section 412(d)(2)”,  
 7 (2) in subsection (b)(1)(F)—

8 (A) by striking “paragraphs (2) and (3) of  
 9 section 412(i)” in clause (ii) and inserting  
 10 “subparagraphs (B) and (C) of section  
 11 412(e)(3)”, and

12 (B) by striking “paragraphs (4), (5), and  
 13 (6) of section 412(i)” and inserting “subpara-  
 14 graphs (D), (E), and (F) of section 412(e)(3)”,  
 15 and

16 (3) by striking “section 412(c)(8)” in sub-  
 17 section (d)(6)(A) and inserting “section 412(e)(2)”.

18 (c) MERGERS AND CONSOLIDATIONS OF PLANS.—  
 19 Subclause (I) of section 414(l)(2)(B)(i) of such Code is  
 20 amended to read as follows:

21 “(I) the amount determined  
 22 under section 431(c)(6)(A)(i) in the  
 23 case of a multiemployer plan (and the  
 24 sum of the funding shortfall and tar-  
 25 get normal cost determined under sec-

1                   tion 430 in the case of any other  
2                   plan), over”.

3           (d) TRANSFER OF EXCESS PENSION ASSETS TO RE-  
4 TIREE HEALTH ACCOUNTS.—

5           (1) Section 420(e)(2) of such Code is amended  
6           to read as follows:

7           “(2) EXCESS PENSION ASSETS.—The term ‘ex-  
8           cess pension assets’ means the excess (if any) of—

9                   “(A) the lesser of—

10                   “(i) the fair market value of the  
11                   plan’s assets (reduced by the prefunding  
12                   balance determined under section 430(f)),  
13                   or

14                   “(ii) the value of plan assets as deter-  
15                   mined under section 430(g)(3) after reduc-  
16                   tion under section 430(f), over

17                   “(B) 125 percent of the sum of the fund-  
18                   ing shortfall and the target normal cost deter-  
19                   mined under section 430 for such plan year.”.

20           (2) Section 420(e)(4) of such Code is amended  
21           to read as follows:

22           “(4) COORDINATION WITH SECTION 430.—In  
23           the case of a qualified transfer, any assets so trans-  
24           ferred shall not, for purposes of this section, be  
25           treated as assets in the plan.”.

1 (e) EXCISE TAXES.—

2 (1) IN GENERAL.—Subsections (a) and (b) of  
3 section 4971 of such Code are amended to read as  
4 follows:

5 “(a) INITIAL TAX.—If at any time during any taxable  
6 year an employer maintains a plan to which section 412  
7 applies, there is hereby imposed for the taxable year a tax  
8 equal to—

9 “(1) in the case of a single-employer plan, 10  
10 percent of the aggregate unpaid minimum required  
11 contributions for all plan years remaining unpaid as  
12 of the end of any plan year ending with or within  
13 the taxable year, and

14 “(2) in the case of a multiemployer plan, 5 per-  
15 cent of the accumulated funding deficiency deter-  
16 mined under section 431 as of the end of any plan  
17 year ending with or within the taxable year.

18 “(b) ADDITIONAL TAX.—If—

19 “(1) a tax is imposed under subsection (a)(1)  
20 on any unpaid required minimum contribution and  
21 such amount remains unpaid as of the close of the  
22 taxable period, or

23 “(2) a tax is imposed under subsection (a)(2)  
24 on any accumulated funding deficiency and the accu-

1       mulated funding deficiency is not corrected within  
 2       the taxable period,  
 3 there is hereby imposed a tax equal to 100 percent of the  
 4 unpaid minimum required contribution or accumulated  
 5 funding deficiency, whichever is applicable, to the extent  
 6 not so paid or corrected.”.

7           (2) Section 4971(c) of such Code is amended—

8           (A) by striking “the last two sentences of  
 9       section 412(a)” in paragraph (1) and inserting  
 10       “section 431”, and

11          (B) by adding at the end the following new  
 12       paragraph:

13       “(4) UNPAID MINIMUM REQUIRED CONTRIBU-  
 14       TION.—

15           “(A) IN GENERAL.—The term ‘unpaid  
 16       minimum required contribution’ means, with re-  
 17       spect to any plan year, any minimum required  
 18       contribution under section 430 for the plan  
 19       year which is not paid on or before the due date  
 20       (as determined under section 430(j)(1)) for the  
 21       plan year.

22           “(B) ORDERING RULE.—Any payment to  
 23       or under a plan for any plan year shall be allo-  
 24       cated first to unpaid minimum required con-  
 25       tributions for all preceding plan years on a

1 first-in, first-out basis and then to the min-  
 2 imum required contribution under section 430  
 3 for the plan year.”.

4 (3) Section 4971(e)(1) of such Code is amended  
 5 by striking “section 412(b)(3)(A)” and inserting  
 6 “section 412(a)(1)(A)”.

7 (4) Section 4971(f)(1) of such Code is  
 8 amended—

9 (A) by striking “section 412(m)(5)” and  
 10 inserting “section 430(j)(4)”, and

11 (B) by striking “section 412(m)” and in-  
 12 serting “section 430(j)”.

13 (5) Section 4972(c)(7) of such Code is amended  
 14 by striking “except to the extent that such contribu-  
 15 tions exceed the full-funding limitation (as defined in  
 16 section 412(c)(7), determined without regard to sub-  
 17 paragraph (A)(i)(I) thereof)” and inserting “except,  
 18 in the case of a multiemployer plan, to the extent  
 19 that such contributions exceed the full-funding limi-  
 20 tation (as defined in section 431(c)(6))”.

21 (f) REPORTING REQUIREMENTS.—Section 6059(b) of  
 22 such Code is amended—

23 (1) by striking “the accumulated funding defi-  
 24 ciency (as defined in section 412(a))” in paragraph

25 (2) and inserting “the minimum required contribu-

1       tion determined under section 430, or the accumu-  
 2       lated funding deficiency determined under section  
 3       431,” and

4               (2) by striking paragraph (3)(B) and inserting:

5               “(B) the requirements for reasonable actu-  
 6               arial assumptions under section 430(h)(1) or  
 7               431(c)(3), whichever are applicable, have been  
 8               complied with.”.

9       **Subtitle C—Interest Rate Assump-**  
 10       **tions and Deductible Amounts**  
 11       **for 2006**

12       **SEC. 121. EXTENSION OF REPLACEMENT OF 30-YEAR**  
 13       **TREASURY RATES.**

14       (a) AMENDMENTS OF ERISA.—

15               (1) DETERMINATION OF RANGE.—Subclause  
 16               (II) of section 302(b)(5)(B)(ii) of the Employee Re-  
 17               tirement Income Security Act of 1974 is amended—

18               (A) by striking “2006” and inserting  
 19               “2007”, and

20               (B) by striking “AND 2005” in the heading  
 21               and inserting “, 2005, AND 2006”.

22               (2) DETERMINATION OF CURRENT LIABILITY.—

23               Subclause (IV) of section 302(d)(7)(C)(i) of such  
 24               Act is amended—

1 (A) by striking “or 2005” and inserting “,  
2 2005, or 2006”, and

3 (B) by striking “AND 2005” in the heading  
4 and inserting “, 2005, AND 2006”.

5 (3) PBGC PREMIUM RATE.—Subclause (V) of  
6 section 4006(a)(3)(E)(iii) of such Act is amended by  
7 striking “2006” and inserting “2007”.

8 (b) AMENDMENTS OF INTERNAL REVENUE CODE.—

9 (1) DETERMINATION OF RANGE.—Subclause  
10 (II) of section 412(b)(5)(B)(ii) of the Internal Rev-  
11 enue Code of 1986 is amended—

12 (A) by striking “2006” and inserting  
13 “2007”, and

14 (B) by striking “AND 2005” in the heading  
15 and inserting “, 2005, AND 2006”.

16 (2) DETERMINATION OF CURRENT LIABILITY.—  
17 Subclause (IV) of section 412(l)(7)(C)(i) of such  
18 Code is amended—

19 (A) by striking “or 2005” and inserting “,  
20 2005, or 2006”, and

21 (B) by striking “AND 2005” in the heading  
22 and inserting “, 2005, AND 2006”.

23 (c) PLAN AMENDMENTS.—Clause (ii) of section  
24 101(c)(2)(A) of the Pension Funding Equity Act of 2004  
25 is amended by striking “2006” and inserting “2007”.



1 **SEC. 122. DEDUCTION LIMITS FOR PLAN CONTRIBUTIONS.**

2 (a) IN GENERAL.—Clause (i) of section 404(a)(1)(D)  
 3 of the Internal Revenue Code of 1986 (relating to special  
 4 rule in case of certain plans) is amended by striking “sec-  
 5 tion 412(l)” and inserting “section 412(l)(8)(A), except  
 6 that section 412(l)(8)(A) shall be applied for purposes of  
 7 this clause by substituting ‘180 percent (130 percent in  
 8 the case of a multiemployer plan) of current liability’ for  
 9 ‘the current liability’ in clause (i).”

10 (b) CONFORMING AMENDMENT.—Section 404(a)(1)  
 11 of the Internal Revenue Code of 1986 is amended by strik-  
 12 ing subparagraph (F).

13 (c) EFFECTIVE DATE.—The amendments made by  
 14 this section shall apply to years beginning after December  
 15 31, 2005.

16 **SEC. 123. UPDATING DEDUCTION RULES FOR COMBINA-**  
 17 **TION OF PLANS.**

18 (a) IN GENERAL.—Subparagraph (C) of section  
 19 404(a)(7) of the Internal Revenue Code of 1986 (relating  
 20 to limitation on deductions where combination of defined  
 21 contribution plan and defined benefit plan) is amended by  
 22 adding after clause (ii) the following new clause:

23 “(iii) LIMITATION.—In the case of  
 24 employer contributions to 1 or more de-  
 25 fined contribution plans, this paragraph  
 26 shall only apply to the extent that such

1 contributions exceed 6 percent of the com-  
 2 pensation otherwise paid or accrued during  
 3 the taxable year to the beneficiaries under  
 4 such plans. For purposes of this clause,  
 5 amounts carried over from preceding tax-  
 6 able years under subparagraph (B) shall  
 7 be treated as employer contributions to 1  
 8 or more defined contributions to the extent  
 9 attributable to employer contributions to  
 10 such plans in such preceding taxable  
 11 years.”

12 (b) CONFORMING AMENDMENT.—Subparagraph (A)  
 13 of section 4972(c)(6) of such Code (relating to nondeduct-  
 14 ible contributions) is amended to read as follows:

15 “(A) so much of the contributions to 1 or  
 16 more defined contribution plans which are not  
 17 deductible when contributed solely because of  
 18 section 404(a)(7) as does not exceed the  
 19 amount of contributions described in section  
 20 401(m)(4)(A), or”.

21 (c) EFFECTIVE DATE.—The amendments made by  
 22 this section shall apply to contributions for taxable years  
 23 beginning after December 31, 2005.

1 **TITLE II—FUNDING AND DEDUC-**  
 2 **TION RULES FOR MULTIEM-**  
 3 **PLOYER DEFINED BENEFIT**  
 4 **PLANS AND RELATED PROVI-**  
 5 **SIONS**

6 **Subtitle A—Funding Rules**

7 **PART I—AMENDMENTS TO EMPLOYEE**

8 **RETIREMENT INCOME SECURITY ACT OF 1974**

9 **SEC. 201. FUNDING RULES FOR MULTIEmployer DEFINED**  
 10 **BENEFIT PLANS.**

11 (a) IN GENERAL.—Part 3 of subtitle B of title I of  
 12 the Employee Retirement Income Security Act of 1974 (as  
 13 amended by this Act) is amended by inserting after section  
 14 303 the following new section:

15 “MINIMUM FUNDING STANDARDS FOR MULTIEmployer  
 16 PLANS

17 “SEC. 304. (a) IN GENERAL.—For purposes of sec-  
 18 tion 302, the accumulated funding deficiency of a multi-  
 19 employer plan for any plan year is—

20 “(1) except as provided in paragraph (2), the  
 21 amount, determined as of the end of the plan year,  
 22 equal to the excess (if any) of the total charges to  
 23 the funding standard account of the plan for all plan  
 24 years (beginning with the first plan year for which

1       this part applies to the plan) over the total credits  
2       to such account for such years, and

3               “(2) if the multiemployer plan is in reorganiza-  
4       tion for any plan year, the accumulated funding de-  
5       ficiency of the plan determined under section 4243.

6       “(b) FUNDING STANDARD ACCOUNT.—

7               “(1) ACCOUNT REQUIRED.—Each multiem-  
8       ployer plan to which this part applies shall establish  
9       and maintain a funding standard account. Such ac-  
10      count shall be credited and charged solely as pro-  
11      vided in this section.

12              “(2) CHARGES TO ACCOUNT.—For a plan year,  
13      the funding standard account shall be charged with  
14      the sum of—

15              “(A) the normal cost of the plan for the  
16      plan year,

17              “(B) the amounts necessary to amortize in  
18      equal annual installments (until fully amor-  
19      tized)—

20              “(i) separately, with respect to each  
21      plan year, the net increase (if any) in un-  
22      funded past service liability under the plan  
23      arising from plan amendments adopted in  
24      such year, over a period of 15 plan years,

1 “(ii) separately, with respect to each  
 2 plan year, the net experience loss (if any)  
 3 under the plan, over a period of 15 plan  
 4 years, and

5 “(iii) separately, with respect to each  
 6 plan year, the net loss (if any) resulting  
 7 from changes in actuarial assumptions  
 8 used under the plan, over a period of 15  
 9 plan years,

10 “(C) the amount necessary to amortize  
 11 each waived funding deficiency (within the  
 12 meaning of section 302(c)(3)) for each prior  
 13 plan year in equal annual installments (until  
 14 fully amortized) over a period of 15 plan years,

15 “(D) the amount necessary to amortize in  
 16 equal annual installments (until fully amor-  
 17 tized) over a period of 5 plan years any amount  
 18 credited to the funding standard account under  
 19 section 302(b)(3)(D) (as in effect on the day  
 20 before the date of the enactment of the Pension  
 21 Security and Transparency Act of 2005), and

22 “(E) the amount necessary to amortize in  
 23 equal annual installments (until fully amor-  
 24 tized) over a period of 20 years the contribu-  
 25 tions which would be required to be made under

1           the plan but for the provisions of section  
 2           302(c)(7)(A)(i)(I) (as in effect on the day be-  
 3           fore the date of the enactment of the Pension  
 4           Security and Transparency Act of 2005).

5           “(3) CREDITS TO ACCOUNT.—For a plan year,  
 6           the funding standard account shall be credited with  
 7           the sum of—

8                   “(A) the amount considered contributed by  
 9                   the employer to or under the plan for the plan  
 10                  year,

11                  “(B) the amount necessary to amortize in  
 12                  equal annual installments (until fully amor-  
 13                  tized)—

14                   “(i) separately, with respect to each  
 15                   plan year, the net decrease (if any) in un-  
 16                   funded past service liability under the plan  
 17                   arising from plan amendments adopted in  
 18                   such year, over a period of 15 plan years,

19                   “(ii) separately, with respect to each  
 20                   plan year, the net experience gain (if any)  
 21                   under the plan, over a period of 15 plan  
 22                   years, and

23                   “(iii) separately, with respect to each  
 24                   plan year, the net gain (if any) resulting  
 25                   from changes in actuarial assumptions

1           used under the plan, over a period of 15  
2           plan years,

3           “(C) the amount of the waived funding de-  
4           ficiency (within the meaning of section  
5           302(c)(3)) for the plan year, and

6           “(D) in the case of a plan year for which  
7           the accumulated funding deficiency is deter-  
8           mined under the funding standard account if  
9           such plan year follows a plan year for which  
10          such deficiency was determined under the alter-  
11          native minimum funding standard under section  
12          305 (as in effect on the day before the date of  
13          the enactment of the Pension Security and  
14          Transparency Act of 2005), the excess (if any)  
15          of any debit balance in the funding standard  
16          account (determined without regard to this sub-  
17          paragraph) over any debit balance in the alter-  
18          native minimum funding standard account.

19          “(4) SPECIAL RULE FOR AMOUNTS FIRST AM-  
20          ORTIZED TO PLAN YEARS BEFORE 2007.—In the case  
21          of any amount amortized under section 302(b) (as  
22          in effect on the day before the date of the enactment  
23          of the Pension Security and Transparency Act of  
24          2005) over any period beginning with a plan year  
25          beginning before 2007, in lieu of the amortization

1 described in paragraphs (2)(B) and (3)(B), such  
2 amount shall continue to be amortized under such  
3 section as so in effect.

4 “(5) COMBINING AND OFFSETTING AMOUNTS  
5 TO BE AMORTIZED.—Under regulations prescribed  
6 by the Secretary of the Treasury, amounts required  
7 to be amortized under paragraph (2) or paragraph  
8 (3), as the case may be—

9 “(A) may be combined into one amount  
10 under such paragraph to be amortized over a  
11 period determined on the basis of the remaining  
12 amortization period for all items entering into  
13 such combined amount, and

14 “(B) may be offset against amounts re-  
15 quired to be amortized under the other such  
16 paragraph, with the resulting amount to be am-  
17 ortized over a period determined on the basis of  
18 the remaining amortization periods for all items  
19 entering into whichever of the two amounts  
20 being offset is the greater.

21 “(6) INTEREST.—The funding standard ac-  
22 count (and items therein) shall be charged or cred-  
23 ited (as determined under regulations prescribed by  
24 the Secretary of the Treasury) with interest at the



1 appropriate rate consistent with the rate or rates of  
 2 interest used under the plan to determine costs.

3 “(7) SPECIAL RULES RELATING TO CHARGES  
 4 AND CREDITS TO FUNDING STANDARD ACCOUNT.—  
 5 For purposes of this part—

6 “(A) WITHDRAWAL LIABILITY.—Any  
 7 amount received by a multiemployer plan in  
 8 payment of all or part of an employer’s with-  
 9 drawal liability under part 1 of subtitle E of  
 10 title IV shall be considered an amount contrib-  
 11 uted by the employer to or under the plan. The  
 12 Secretary of the Treasury may prescribe by reg-  
 13 ulation additional charges and credits to a mul-  
 14 tiemployer plan’s funding standard account to  
 15 the extent necessary to prevent withdrawal li-  
 16 ability payments from being unduly reflected as  
 17 advance funding for plan liabilities.

18 “(B) ADJUSTMENTS WHEN A MULTITEM-  
 19 PLOYER PLAN LEAVES REORGANIZATION.—If a  
 20 multiemployer plan is not in reorganization in  
 21 the plan year but was in reorganization in the  
 22 immediately preceding plan year, any balance in  
 23 the funding standard account at the close of  
 24 such immediately preceding plan year—

1 “(i) shall be eliminated by an offset-  
2 ting credit or charge (as the case may be),  
3 but

4 “(ii) shall be taken into account in  
5 subsequent plan years by being amortized  
6 in equal annual installments (until fully  
7 amortized) over 30 plan years.

8 The preceding sentence shall not apply to the  
9 extent of any accumulated funding deficiency  
10 under section 4243(a) as of the end of the last  
11 plan year that the plan was in reorganization.

12 “(C) PLAN PAYMENTS TO SUPPLEMENTAL  
13 PROGRAM OR WITHDRAWAL LIABILITY PAYMENT  
14 FUND.—Any amount paid by a plan during a  
15 plan year to the Pension Benefit Guaranty Cor-  
16 poration pursuant to section 4222 of this Act or  
17 to a fund exempt under section 501(c)(22) of  
18 the Internal Revenue Code of 1986 pursuant to  
19 section 4223 of this Act shall reduce the  
20 amount of contributions considered received by  
21 the plan for the plan year.

22 “(D) INTERIM WITHDRAWAL LIABILITY  
23 PAYMENTS.—Any amount paid by an employer  
24 pending a final determination of the employer’s  
25 withdrawal liability under part 1 of subtitle E

1 of title IV and subsequently refunded to the  
2 employer by the plan shall be charged to the  
3 funding standard account in accordance with  
4 regulations prescribed by the Secretary of the  
5 Treasury.

6 “(E) ELECTION FOR DEFERRAL OF  
7 CHARGE FOR PORTION OF NET EXPERIENCE  
8 LOSS.—If an election is in effect under section  
9 302(b)(7)(F) (as in effect on the day before the  
10 date of the enactment of the Pension Security  
11 and Transparency Act of 2005) for any plan  
12 year, the funding standard account shall be  
13 charged in the plan year to which the portion  
14 of the net experience loss deferred by such elec-  
15 tion was deferred with the amount so deferred  
16 (and paragraph (2)(B)(ii) shall not apply to the  
17 amount so charged).

18 “(F) FINANCIAL ASSISTANCE.—Any  
19 amount of any financial assistance from the  
20 Pension Benefit Guaranty Corporation to any  
21 plan, and any repayment of such amount, shall  
22 be taken into account under this section and  
23 section 412 of the Internal Revenue Code of  
24 1986 in such manner as is determined by the  
25 Secretary of the Treasury.

1           “(G) SHORT-TERM BENEFITS.—To the ex-  
 2           tent that any plan amendment increases the un-  
 3           funded past service liability under the plan by  
 4           reason of an increase in benefits which are pay-  
 5           able under the terms of the plan for a period  
 6           that does not exceed 14 years from the effective  
 7           date of the amendment, paragraph (2)(B)(i)  
 8           shall be applied separately with respect to such  
 9           increase in unfunded past service liability by  
 10          substituting the number of years of the period  
 11          during which such benefits are payable for ‘15’.

12          “(c) ADDITIONAL RULES.—

13           “(1) DETERMINATIONS TO BE MADE UNDER  
 14          FUNDING METHOD.—For purposes of this part, nor-  
 15          mal costs, accrued liability, past service liabilities,  
 16          and experience gains and losses shall be determined  
 17          under the funding method used to determine costs  
 18          under the plan.

19           “(2) VALUATION OF ASSETS.—

20           “(A) IN GENERAL.—For purposes of this  
 21          part, the value of the plan’s assets shall be de-  
 22          termined on the basis of any reasonable actu-  
 23          arial method of valuation which takes into ac-  
 24          count fair market value and which is permitted

1 under regulations prescribed by the Secretary of  
2 the Treasury.

3 “(B) ELECTION WITH RESPECT TO  
4 BONDS.—The value of a bond or other evidence  
5 of indebtedness which is not in default as to  
6 principal or interest may, at the election of the  
7 plan administrator, be determined on an amor-  
8 tized basis running from initial cost at purchase  
9 to par value at maturity or earliest call date.  
10 Any election under this subparagraph shall be  
11 made at such time and in such manner as the  
12 Secretary of the Treasury shall by regulations  
13 provide, shall apply to all such evidences of in-  
14 debtedness, and may be revoked only with the  
15 consent of such Secretary.

16 “(3) ACTUARIAL ASSUMPTIONS MUST BE REA-  
17 SONABLE.—For purposes of this section, all costs, li-  
18 abilities, rates of interest, and other factors under  
19 the plan shall be determined on the basis of actu-  
20 arial assumptions and methods—

21 “(A) each of which is reasonable (taking  
22 into account the experience of the plan and rea-  
23 sonable expectations), and

1           “(B) which, in combination, offer the actu-  
 2           ary’s best estimate of anticipated experience  
 3           under the plan.

4           “(4) TREATMENT OF CERTAIN CHANGES AS EX-  
 5           PERIENCE GAIN OR LOSS.—For purposes of this sec-  
 6           tion, if—

7           “(A) a change in benefits under the Social  
 8           Security Act or in other retirement benefits cre-  
 9           ated under Federal or State law, or

10          “(B) a change in the definition of the term  
 11          ‘wages’ under section 3121 of the Internal Rev-  
 12          enue Code of 1986, or a change in the amount  
 13          of such wages taken into account under regula-  
 14          tions prescribed for purposes of section  
 15          401(a)(5) of such Code,  
 16          results in an increase or decrease in accrued liability  
 17          under a plan, such increase or decrease shall be  
 18          treated as an experience loss or gain.

19          “(5) FULL FUNDING.—If, as of the close of a  
 20          plan year, a plan would (without regard to this para-  
 21          graph) have an accumulated funding deficiency in  
 22          excess of the full funding limitation—

23          “(A) the funding standard account shall be  
 24          credited with the amount of such excess, and

“(B) all amounts described in subparagraphs (B), (C), and (D) of subsection (b) (2) and subparagraph (B) of subsection (b)(3) which are required to be amortized shall be considered fully amortized for purposes of such subparagraphs.

“(6) FULL-FUNDING LIMITATION.—

“(A) IN GENERAL.—For purposes of paragraph (5), the term ‘full-funding limitation’ means the excess (if any) of—

“(i) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

“(ii) the lesser of—

“(I) the fair market value of the plan’s assets, or

“(II) the value of such assets determined under paragraph (2).

“(B) MINIMUM AMOUNT.—

“(i) IN GENERAL.—In no event shall the full-funding limitation determined

1 under subparagraph (A) be less than the  
2 excess (if any) of—

3 “(I) 90 percent of the current li-  
4 ability of the plan (including the ex-  
5 pected increase in current liability due  
6 to benefits accruing during the plan  
7 year), over

8 “(II) the value of the plan’s as-  
9 sets determined under paragraph (2).

10 “(ii) ASSETS.—For purposes of clause  
11 (i), assets shall not be reduced by any  
12 credit balance in the funding standard ac-  
13 count.

14 “(C) FULL FUNDING LIMITATION.—For  
15 purposes of this paragraph, unless otherwise  
16 provided by the plan, the accrued liability under  
17 a multiemployer plan shall not include benefits  
18 which are not nonforfeitable under the plan  
19 after the termination of the plan (taking into  
20 consideration section 411(d)(3) of the Internal  
21 Revenue Code of 1986).

22 “(D) CURRENT LIABILITY.—For purposes  
23 of this paragraph—



1 “(i) IN GENERAL.—The term ‘current  
2 liability’ means all liabilities to employees  
3 and their beneficiaries under the plan.

4 “(ii) TREATMENT OF UNPREDICTABLE  
5 CONTINGENT EVENT BENEFITS.—For pur-  
6 poses of clause (i), any benefit contingent  
7 on an event other than—

8 “(I) age, service, compensation,  
9 death, or disability, or

10 “(II) an event which is reason-  
11 ably and reliably predictable (as deter-  
12 mined by the Secretary of the Treas-  
13 ury),

14 shall not be taken into account until the  
15 event on which the benefit is contingent oc-  
16 curs.

17 “(iii) INTEREST RATE USED.—The  
18 rate of interest used to determine current  
19 liability under this paragraph shall be the  
20 rate of interest determined under subpara-  
21 graph (E).

22 “(iv) MORTALITY TABLES.—

23 “(I) COMMISSIONERS’ STANDARD  
24 TABLE.—In the case of plan years be-  
25 ginning before the first plan year to

1 which the first tables prescribed under  
2 subclause (II) apply, the mortality  
3 table used in determining current li-  
4 ability under this paragraph shall be  
5 the table prescribed by the Secretary  
6 of the Treasury which is based on the  
7 prevailing commissioners' standard  
8 table (described in section  
9 807(d)(5)(A) of the Internal Revenue  
10 Code of 1986) used to determine re-  
11 serves for group annuity contracts  
12 issued on January 1, 1993.

13 “(II) SECRETARIAL AUTHOR-  
14 ITY.—The Secretary of the Treasury  
15 may by regulation prescribe for plan  
16 years beginning after December 31,  
17 1999, mortality tables to be used in  
18 determining current liability under  
19 this subsection. Such tables shall be  
20 based upon the actual experience of  
21 pension plans and projected trends in  
22 such experience. In prescribing such  
23 tables, such Secretary shall take into  
24 account results of available inde-

1                   pendent studies of mortality of indi-  
2                   viduals covered by pension plans.

3                   “(v) SEPARATE MORTALITY TABLES  
4                   FOR THE DISABLED.—Notwithstanding  
5                   clause (iv)—

6                   “(I) IN GENERAL.—The Sec-  
7                   retary of the Treasury shall establish  
8                   mortality tables which may be used  
9                   (in lieu of the tables under clause (iv))  
10                  to determine current liability under  
11                  this subsection for individuals who are  
12                  entitled to benefits under the plan on  
13                  account of disability. Such Secretary  
14                  shall establish separate tables for indi-  
15                  viduals whose disabilities occur in  
16                  plan years beginning before January  
17                  1, 1995, and for individuals whose  
18                  disabilities occur in plan years begin-  
19                  ning on or after such date.

20                  “(II) SPECIAL RULE FOR DIS-  
21                  ABILITIES OCCURRING AFTER 1994.—  
22                  In the case of disabilities occurring in  
23                  plan years beginning after December  
24                  31, 1994, the tables under subclause  
25                  (I) shall apply only with respect to in-

1           dividuals described in such subclause  
 2           who are disabled within the meaning  
 3           of title II of the Social Security Act  
 4           and the regulations thereunder.

5           “(vi) PERIODIC REVIEW.—The Sec-  
 6           retary of the Treasury shall periodically (at  
 7           least every 5 years) review any tables in ef-  
 8           fect under this subparagraph and shall, to  
 9           the extent such Secretary determines nec-  
 10          essary, by regulation update the tables to  
 11          reflect the actual experience of pension  
 12          plans and projected trends in such experi-  
 13          ence.

14          “(E) REQUIRED CHANGE OF INTEREST  
 15          RATE.—For purposes of determining a plan’s  
 16          current liability for purposes of this  
 17          paragraph—

18               “(i) IN GENERAL.—If any rate of in-  
 19               terest used under the plan under sub-  
 20               section (b)(6) to determine cost is not  
 21               within the permissible range, the plan shall  
 22               establish a new rate of interest within the  
 23               permissible range.

24               “(ii) PERMISSIBLE RANGE.—For pur-  
 25               poses of this subparagraph—

1                   “(I) IN GENERAL.—Except as  
 2                   provided in subclause (II), the term  
 3                   ‘permissible range’ means a rate of in-  
 4                   terest which is not more than 5 per-  
 5                   cent above, and not more than 10 per-  
 6                   cent below, the weighted average of  
 7                   the rates of interest on 30-year Treas-  
 8                   ury securities during the 4-year period  
 9                   ending on the last day before the be-  
 10                  ginning of the plan year.

11                  “(II) SECRETARIAL AUTHOR-  
 12                  ITY.—If the Secretary of the Treasury  
 13                  finds that the lowest rate of interest  
 14                  permissible under subclause (I) is un-  
 15                  reasonably high, such Secretary may  
 16                  prescribe a lower rate of interest, ex-  
 17                  cept that such rate may not be less  
 18                  than 80 percent of the average rate  
 19                  determined under such subclause.

20                  “(iii) ASSUMPTIONS.—Notwith-  
 21                  standing paragraph (3)(A), the interest  
 22                  rate used under the plan shall be—

23                         “(I) determined without taking  
 24                         into account the experience of the  
 25                         plan and reasonable expectations, but

1 “(II) consistent with the assump-  
2 tions which reflect the purchase rates  
3 which would be used by insurance  
4 companies to satisfy the liabilities  
5 under the plan.

6 “(7) ANNUAL VALUATION.—

7 “(A) IN GENERAL.—For purposes of this  
8 section, a determination of experience gains and  
9 losses and a valuation of the plan’s liability  
10 shall be made not less frequently than once  
11 every year, except that such determination shall  
12 be made more frequently to the extent required  
13 in particular cases under regulations prescribed  
14 by the Secretary of the Treasury.

15 “(B) VALUATION DATE.—

16 “(i) CURRENT YEAR.—Except as pro-  
17 vided in clause (ii), the valuation referred  
18 to in subparagraph (A) shall be made as of  
19 a date within the plan year to which the  
20 valuation refers or within one month prior  
21 to the beginning of such year.

22 “(ii) USE OF PRIOR YEAR VALU-  
23 ATION.—The valuation referred to in sub-  
24 paragraph (A) may be made as of a date  
25 within the plan year prior to the year to

1           which the valuation refers if, as of such  
 2           date, the value of the assets of the plan are  
 3           not less than 100 percent of the plan's cur-  
 4           rent liability (as defined in paragraph  
 5           (6)(D) without regard to clause (iv) there-  
 6           of).

7           “(iii)    ADJUSTMENTS.—Information  
 8           under clause (ii) shall, in accordance with  
 9           regulations, be actuarially adjusted to re-  
 10          flect significant differences in participants.

11          “(iv) LIMITATION.—A change in fund-  
 12          ing method to use a prior year valuation,  
 13          as provided in clause (ii), may not be made  
 14          unless as of the valuation date within the  
 15          prior plan year, the value of the assets of  
 16          the plan are not less than 125 percent of  
 17          the plan's current liability (as defined in  
 18          paragraph (6)(D) without regard to clause  
 19          (iv) thereof).

20          “(8) TIME WHEN CERTAIN CONTRIBUTIONS  
 21          DEEMED MADE.—For purposes of this section, any  
 22          contributions for a plan year made by an employer  
 23          after the last day of such plan year, but not later  
 24          than two and one-half months after such day, shall  
 25          be deemed to have been made on such last day. For

1 purposes of this subparagraph, such two and one-  
 2 half month period may be extended for not more  
 3 than six months under regulations prescribed by the  
 4 Secretary of the Treasury.

5 “(d) EXTENSION OF AMORTIZATION PERIODS FOR  
 6 MULTIEMPLOYER PLANS.—

7 “(1) AUTOMATIC EXTENSION UPON APPLICA-  
 8 TION BY CERTAIN PLANS.—

9 “(A) IN GENERAL.—If the plan sponsor of  
 10 a multiemployer plan—

11 “(i) submits to the Secretary of the  
 12 Treasury an application for an extension of  
 13 the period of years required to amortize  
 14 any unfunded liability described in any  
 15 clause of subsection (b)(2)(B) or described  
 16 in subsection (b)(4), and

17 “(ii) includes with the application a  
 18 certification by the plan’s actuary de-  
 19 scribed in subparagraph (B),

20 the Secretary of the Treasury shall extend the  
 21 amortization period for the period of time (not  
 22 in excess of 5 years) specified in the applica-  
 23 tion. Such extension shall be in addition to any  
 24 extension under paragraph (2).



“(B) CRITERIA.—A certification with respect to a multiemployer plan is described in this subparagraph if the plan’s actuary certifies that, based on reasonable assumptions—

“(i) absent the extension under subparagraph (A), the plan would have an accumulated funding deficiency in the current plan year or any of the 9 succeeding plan years,

“(ii) the plan sponsor has adopted a plan to improve the plan’s funding status,

“(iii) the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period as extended, and

“(iv) the notice required under paragraph (3)(A) has been provided.

“(2) ADDITIONAL EXTENSION.—

“(A) IN GENERAL.—If the plan sponsor of a multiemployer plan submits to the Secretary of the Treasury an application for an extension of the period of years required to amortize any unfunded liability described in any clause of subsection (b)(2)(B) or described in subsection (b)(4), the Secretary of the Treasury may ex-

1           tend the amortization period for a period of  
 2           time (not in excess of 5 years) if the Secretary  
 3           of the Treasury makes the determination de-  
 4           scribed in subparagraph (B). Such extension  
 5           shall be in addition to any extension under  
 6           paragraph (1).

7           “(B) DETERMINATION.—The Secretary  
 8           make grant an extension under subparagraph  
 9           (A) if the Secretary determines that—

10           “(i) such extension would carry out  
 11           the purposes of this Act and would provide  
 12           adequate protection for participants under  
 13           the plan and their beneficiaries, and

14           “(ii) the failure to permit such exten-  
 15           sion would—

16           “(I) result in a substantial risk  
 17           to the voluntary continuation of the  
 18           plan, or a substantial curtailment of  
 19           pension benefit levels or employee  
 20           compensation, and

21           “(II) be adverse to the interests  
 22           of plan participants in the aggregate.

23           “(C) ACTION BY SECRETARY.—The Sec-  
 24           retary of the Treasury shall act upon any appli-  
 25           cation for an extension under this paragraph

1 within 180 days of the submission of such ap-  
 2 plication. If the Secretary rejects the applica-  
 3 tion for an extension under this paragraph, the  
 4 Secretary shall provide notice to the plan detail-  
 5 ing the specific reasons for the rejection, includ-  
 6 ing references to the criteria set forth above.

7 “(3) ADVANCE NOTICE.—

8 “(A) IN GENERAL.—The Secretary of the  
 9 Treasury shall, before granting an extension  
 10 under this subsection, require each applicant to  
 11 provide evidence satisfactory to such Secretary  
 12 that the applicant has provided notice of the fil-  
 13 ing of the application for such extension to each  
 14 affected party (as defined in section  
 15 4001(a)(21)) with respect to the affected plan.  
 16 Such notice shall include a description of the  
 17 extent to which the plan is funded for benefits  
 18 which are guaranteed under title IV and for  
 19 benefit liabilities.

20 “(B) CONSIDERATION OF RELEVANT IN-  
 21 FORMATION.—The Secretary of the Treasury  
 22 shall consider any relevant information provided  
 23 by a person to whom notice was given under  
 24 paragraph (1).”.

25 (b) SHORTFALL FUNDING METHOD.—

1           (1) IN GENERAL.—A multiemployer plan meet-  
 2           ing the criteria of paragraph (2) may adopt, use, or  
 3           cease using, the shortfall funding method and such  
 4           adoption, use, or cessation of use of such method,  
 5           shall be deemed approved by the Secretary of the  
 6           Treasury under section 302(d)(1) of the Employee  
 7           Retirement Income Security Act of 1974 and section  
 8           412(e)(1) of the Internal Revenue Code of 1986.

9           (2) CRITERIA.—A multiemployer pension plan  
 10          meets the criteria of this clause if—

11                (A) the plan has not used the shortfall  
 12                funding method during the 5-year period ending  
 13                on the day before the date the plan is to use  
 14                the method under paragraph (1); and

15                (B) the plan is not operating under an am-  
 16                ortization period extension under section 304(d)  
 17                of such Act and did not operate under such an  
 18                extension during such 5-year period.

19          (3) SHORTFALL FUNDING METHOD DEFINED.—  
 20          For purposes of this subsection, the term “shortfall  
 21          funding method” means the shortfall funding meth-  
 22          od described in Treasury Regulations section  
 23          1.412(c)(1)–2 (26 C.F.R. 1.412(c)(1)–2).

24          (4) BENEFIT RESTRICTIONS TO APPLY.—The  
 25          benefit restrictions under section 302(c)(7) of such

1 Act and section 412(d)(7) of such Code shall apply  
 2 during any period a multiemployer plan is on the  
 3 shortfall funding method pursuant to this sub-  
 4 section.

5 (5) USE OF SHORTFALL METHOD NOT TO PRE-  
 6 CLUDE OTHER OPTIONS.—Nothing in this subsection  
 7 shall be construed to affect a multiemployer plan’s  
 8 ability to adopt the shortfall funding method with  
 9 the Secretary’s permission under otherwise applica-  
 10 ble regulations or to affect a multiemployer plan’s  
 11 right to change funding methods, with or without  
 12 the Secretary’s consent, as provided in applicable  
 13 rules and regulations.

14 (c) CONFORMING AMENDMENTS.—

15 (1) Section 301 of the Employee Retirement In-  
 16 come Security Act of 1974 (29 U.S.C. 1081) is  
 17 amended by striking subsection (d).

18 (2) The table of contents in section 1 of such  
 19 Act (as amended by this Act) is amended by insert-  
 20 ing after the item relating to section 303 the fol-  
 21 lowing new item:

“Sec. 304. Minimum funding standards for multiemployer plans.”.

22 (d) EFFECTIVE DATE.—

23 (1) IN GENERAL.—The amendments made by  
 24 this section shall apply to plan years beginning after  
 25 2006.

1           (2) SPECIAL RULE FOR CERTAIN AMORTIZATION  
 2           EXTENSIONS.—If the Secretary of the Treasury  
 3           grants an extension under section 304 of the Em-  
 4           ployee Retirement Income Security Act of 1974 and  
 5           section 412(e) of the Internal Revenue Code of 1986  
 6           with respect to any application filed with the Sec-  
 7           retary of the Treasury on or before June 30, 2005,  
 8           the extension (and any modification thereof) shall be  
 9           applied and administered under the rules of such  
 10          sections as in effect before the enactment of this  
 11          Act, including the use of the rate of interest deter-  
 12          mined under section 6621(b) of such Code.

13 **SEC. 202. ADDITIONAL FUNDING RULES FOR MULTIEM-**  
 14 **PLOYER PLANS IN ENDANGERED OR CRIT-**  
 15 **ICAL STATUS.**

16          (a) IN GENERAL.—Part 3 of subtitle B of title I of  
 17          the Employee Retirement Income Security Act of 1974 (as  
 18          amended by the preceding provisions of this Act) is  
 19          amended by inserting after section 304 the following new  
 20          section:

21          “ADDITIONAL FUNDING RULES FOR MULTIEMPLOYER  
 22          PLANS IN ENDANGERED STATUS OR CRITICAL STATUS

23          “SEC. 305. (a) GENERAL RULE.—For purposes of  
 24          this part, in the case of a multiemployer plan—

25                  “(1) if the plan is in endangered status—

1           “(A) the plan sponsor shall adopt and im-  
 2           plement a funding improvement plan in accord-  
 3           ance with the requirements of subsection (c),  
 4           and

5           “(B) the requirements of subsection (d)  
 6           shall apply during the funding plan adoption  
 7           period and the funding improvement period,  
 8           and

9           “(2) if the plan is in critical status—

10           “(A) the plan sponsor shall adopt and im-  
 11           plement a rehabilitation plan in accordance with  
 12           the requirements of subsection (e), and

13           “(B) the requirements of subsection (f)  
 14           shall apply during the rehabilitation plan adop-  
 15           tion period and the rehabilitation period.

16           “(b) DETERMINATION OF ENDANGERED AND CRIT-  
 17           ICAL STATUS.—For purposes of this section—

18           “(1) ENDANGERED STATUS.—A multiemployer  
 19           plan is in endangered status for a plan year if, as  
 20           determined by the plan actuary under paragraph  
 21           (3), the plan is not in critical status for the plan  
 22           year and either—

23           “(A) the plan’s funded percentage for such  
 24           plan year is less than 80 percent, or

1           “(B) the plan has an accumulated funding  
 2           deficiency for such plan year, or is projected to  
 3           have such an accumulated funding deficiency  
 4           for any of the 6 succeeding plan years, taking  
 5           into account any extension of amortization peri-  
 6           ods under section 304(d).

7           For purposes of this section, a plan described in  
 8           subparagraph (B) shall be treated as in seriously en-  
 9           dangered status.

10           “(2) CRITICAL STATUS.—A multiemployer plan  
 11           is in critical status for a plan year if, as determined  
 12           by the plan actuary under paragraph (3), the plan  
 13           is described in 1 or more of the following subpara-  
 14           graphs as of the beginning of the plan year:

15           “(A) A plan is described in this subpara-  
 16           graph if—

17           “(i) the funded percentage of the plan  
 18           is less than 65 percent, and

19           “(ii) the sum of—

20           “(I) the market value of plan as-  
 21           sets, plus

22           “(II) the present value of the  
 23           reasonably anticipated employer con-  
 24           tributions for the current plan year  
 25           and each of the 5 succeeding plan



1                   years, assuming that the terms of all  
2                   collective bargaining agreements pur-  
3                   suant to which the plan is maintained  
4                   for the current plan year continue in  
5                   effect for succeeding plan years,  
6                   is less than the present value of all benefits  
7                   projected to be payable under the plan dur-  
8                   ing the current plan year and each of the  
9                   5 succeeding plan years (plus administra-  
10                  tive expenses for such plan years).

11               “(B) A plan is described in this subpara-  
12               graph if—

13                   “(i) the plan has an accumulated  
14                   funding deficiency for the current plan  
15                   year, not taking into account any extension  
16                   of amortization periods under section  
17                   304(d), or

18                   “(ii) the plan is projected to have an  
19                   accumulated funding deficiency for any of  
20                   the 3 succeeding plan years (4 succeeding  
21                   plan years if the funded percentage of the  
22                   plan is 65 percent or less), not taking into  
23                   account any extension of amortization peri-  
24                   ods under section 304(d).

1           “(C) A plan is described in this subpara-  
2 graph if—

3           “(i)(I) the plan’s normal cost for the  
4 current plan year, plus interest (deter-  
5 mined at the rate used for determining  
6 costs under the plan) for the current plan  
7 year on the amount of unfunded benefit li-  
8 abilities under the plan as of the last date  
9 of the preceding plan year, exceeds

10           “(II) the present value of the reason-  
11 ably anticipated employer contributions for  
12 the current plan year,

13           “(ii) the present value of nonforfeit-  
14 able benefits of inactive participants is  
15 greater than the present value of non-  
16 forfeitable benefits of active participants,  
17 and

18           “(iii) the plan has an accumulated  
19 funding deficiency for the current plan  
20 year, or is projected to have such a defi-  
21 ciency for any of the 4 succeeding plan  
22 years, not taking into account any exten-  
23 sion of amortization periods under section  
24 304(d).

1           “(D) A plan is described in this subpara-  
2 graph if the sum of—

3                   “(i) the market value of plan assets,  
4 plus

5                   “(ii) the present value of the reason-  
6 ably anticipated employer contributions for  
7 the current plan year and each of the 4  
8 succeeding plan years, assuming that the  
9 terms of all collective bargaining agree-  
10 ments pursuant to which the plan is main-  
11 tained for the current plan year continue  
12 in effect for succeeding plan years,

13 is less than the present value of all benefits pro-  
14 jected to be payable under the plan during the  
15 current plan year and each of the 4 succeeding  
16 plan years (plus administrative expenses for  
17 such plan years).

18           “(3) ANNUAL CERTIFICATION BY PLAN ACTU-  
19 ARY.—

20                   “(A) IN GENERAL.—During the 90-day pe-  
21 riod beginning on the first day of each plan  
22 year of a multiemployer plan, the plan actuary  
23 shall certify to the Secretary of the Treasury—

24                   “(i) whether or not the plan is in en-  
25 dangered status for such plan year and

whether or not the plan is in critical status  
for such plan year, and

“(ii) in the case of a plan which is in  
a funding improvement or rehabilitation  
period, whether or not the plan is making  
the scheduled progress in meeting the re-  
quirements of its funding improvement or  
rehabilitation plan.

“(B) ACTUARIAL PROJECTIONS OF ASSETS  
AND LIABILITIES.—

“(i) IN GENERAL.—In making the de-  
terminations and projections under this  
subsection, the plan actuary shall make  
projections required for the current and  
succeeding plan years, using reasonable ac-  
tuarial estimates, assumptions, and meth-  
ods, of the current value of the assets of  
the plan and the present value of all liabil-  
ities to participants and beneficiaries under  
the plan for the current plan year as of the  
beginning of such year. The projected  
present value of liabilities as of the begin-  
ning of such year shall be determined  
based on the actuarial statement required  
under section 103(d) with respect to the

1 most recently filed annual report or the ac-  
 2 tuarial valuation for the preceding plan  
 3 year.

4 “(ii) DETERMINATIONS OF FUTURE  
 5 CONTRIBUTIONS.—Any actuarial projection  
 6 of plan assets shall assume—

7 “(I) reasonably anticipated em-  
 8 ployer contributions for the current  
 9 and succeeding plan years, assuming  
 10 that the terms of the one or more col-  
 11 lective bargaining agreements pursu-  
 12 ant to which the plan is maintained  
 13 for the current plan year continue in  
 14 effect for succeeding plan years, or

15 “(II) that employer contributions  
 16 for the most recent plan year will con-  
 17 tinue indefinitely, but only if the plan  
 18 actuary determines there have been no  
 19 significant demographic changes that  
 20 would make such assumption unrea-  
 21 sonable.

22 “(C) PENALTY FOR FAILURE TO SECURE  
 23 TIMELY ACTUARIAL CERTIFICATION.—Any fail-  
 24 ure of the plan’s actuary to certify the plan’s  
 25 status under this subsection by the date speci-

1           fied in subparagraph (A) shall be treated for  
 2           purposes of section 502(c)(2) as a failure or re-  
 3           fusai by the plan administrator to file the an-  
 4           nual report required to be filed with the Sec-  
 5           retary under section 101(b)(4).

6           “(D) NOTICE.—In any case in which a  
 7           multiemployer plan is certified to be in endan-  
 8           gered or critical status under subparagraph (A),  
 9           the plan sponsor shall, not later than 30 days  
 10          after the date of the certification, provide notifi-  
 11          cation of the endangered or critical status to  
 12          the participants and beneficiaries, the bar-  
 13          gaining parties, the Pension Benefit Guaranty  
 14          Corporation, the Secretary of the Treasury, and  
 15          the Secretary.

16          “(c) FUNDING IMPROVEMENT PLAN MUST BE  
 17          ADOPTED FOR MULTIEMPLOYER PLANS IN ENDANGERED  
 18          STATUS.—

19               “(1) IN GENERAL.—In any case in which a  
 20          multiemployer plan is in endangered status for a  
 21          plan year, the plan sponsor, in accordance with this  
 22          subsection—

23               “(A) shall adopt a funding improvement  
 24          plan not later than 240 days following the re-  
 25          quired date for the actuarial certification of en-

1           dangered status under subsection (b)(3)(A),  
2           and

3           “(B) within 30 days after the adoption of  
4           the funding improvement plan—

5           “(i) in the case of a plan in seriously  
6           endangered status, shall provide to the  
7           bargaining parties 1 or more schedules  
8           showing revised benefit structures, revised  
9           contribution structures, or both, which, if  
10          adopted, may reasonably be expected to en-  
11          able the multiemployer plan to meet the  
12          applicable requirements under paragraph  
13          (3) in accordance with the funding im-  
14          provement plan, including a description of  
15          the reductions in future benefit accruals  
16          and increases in contributions that the  
17          plan sponsor determines are reasonably  
18          necessary to meet the applicable require-  
19          ments if the plan sponsor assumes that  
20          there are no increases in contributions  
21          under the plan other than the increases  
22          necessary to meet the applicable require-  
23          ments after future benefit accruals have  
24          been reduced to the maximum extent per-  
25          mitted by law, and

1                   “(ii) may, if the plan sponsor deems  
 2                   appropriate, prepare and provide the bar-  
 3                   gaining parties with additional information  
 4                   relating to contribution rates or benefit re-  
 5                   ductions, alternative schedules, or other in-  
 6                   formation relevant to achieving the re-  
 7                   quirements under paragraph (3) in accord-  
 8                   ance with the funding improvement plan.

9                   “(2) EXCEPTION FOR YEARS AFTER PROCESS  
 10                  BEGINS.—Paragraph (1) shall not apply to a plan  
 11                  year if such year is in a funding plan adoption pe-  
 12                  riod or funding improvement period by reason of the  
 13                  plan being in endangered status for a preceding plan  
 14                  year. For purposes of this section, such preceding  
 15                  plan year shall be the initial determination year with  
 16                  respect to the funding improvement plan to which it  
 17                  relates.

18                  “(3) FUNDING IMPROVEMENT PLAN.—For pur-  
 19                  poses of this section—

20                  “(A) IN GENERAL.—A funding improve-  
 21                  ment plan is a plan which consists of the ac-  
 22                  tions, including options or a range of options to  
 23                  be proposed to the bargaining parties, which,  
 24                  under reasonable actuarial assumptions, will re-



1           sult in the plan meeting the requirements of  
2           this paragraph.

3           “(B) PLANS OTHER THAN SERIOUSLY EN-  
4           DANGERED PLANS.—In the case of plan not in  
5           seriously endangered status, the requirements  
6           of this paragraph are met if the plan’s funded  
7           percentage as of the close of the funding im-  
8           provement period exceeds the lesser of 80 per-  
9           cent or a percentage equal to the sum of—

10                   “(i) such percentage as of the begin-  
11                   ning of such period, plus

12                   “(ii) 10 percent of the percentage  
13                   under clause (i).

14           “(C) SERIOUSLY ENDANGERED PLANS.—  
15           In the case of a plan in seriously endangered  
16           status, the requirements of this paragraph are  
17           met if—

18                   “(i) the plan’s funded percentage as  
19                   of the close of the funding improvement  
20                   period equals or exceeds the percentage  
21                   which is equal to the sum of—

22                   “(I) such percentage as of the  
23                   beginning of such period, plus

1 “(II) 33 percent of the difference  
 2 between 100 percent and the percent-  
 3 age under subclause (I), and

4 “(ii) there is no accumulated funding  
 5 deficiency for any plan year during the  
 6 funding improvement period (taking into  
 7 account any extension of amortization peri-  
 8 ods under section 304(d)).

9 “(4) FUNDING IMPROVEMENT PERIOD.—For  
 10 purposes of this section—

11 “(A) IN GENERAL.—The funding improve-  
 12 ment period for any funding improvement plan  
 13 adopted pursuant to this subsection is the 10-  
 14 year period beginning on the first day of the  
 15 first plan year of the multiemployer plan begin-  
 16 ning after the earlier of—

17 “(i) the second anniversary of the  
 18 date of the adoption of the funding im-  
 19 provement plan, or

20 “(ii) the expiration of the collective  
 21 bargaining agreements in effect on the due  
 22 date for the actuarial certification of en-  
 23 dangered status for the initial determina-  
 24 tion year under subsection (b)(3)(A) and  
 25 covering, as of such due date, at least 75

1 percent of the active participants in such  
2 multiemployer plan.

3 “(B) COORDINATION WITH CHANGES IN  
4 STATUS.—

5 “(i) PLANS NO LONGER IN ENDAN-  
6 GERED STATUS.—If the plan’s actuary cer-  
7 tifies under subsection (b)(3)(A) for a plan  
8 year in any funding plan adoption period  
9 or funding improvement period that the  
10 plan is no longer in endangered status and  
11 is not in critical status, the funding plan  
12 adoption period or funding improvement  
13 period, whichever is applicable, shall end as  
14 of the close of the preceding plan year.

15 “(ii) PLANS IN CRITICAL STATUS.—If  
16 the plan’s actuary certifies under sub-  
17 section (b)(3)(A) for a plan year in any  
18 funding plan adoption period or funding  
19 improvement period that the plan is in  
20 critical status, the funding plan adoption  
21 period or funding improvement period,  
22 whichever is applicable, shall end as of the  
23 close of the plan year preceding the first  
24 plan year in the rehabilitation period with  
25 respect to such status.

1           “(C) PLANS IN ENDANGERED STATUS AT  
 2           END OF PERIOD.—If the plan’s actuary certifies  
 3           under subsection (b)(3)(A) for the first plan  
 4           year following the close of the period described  
 5           in subparagraph (A) that the plan is in endan-  
 6           gered status, the provisions of this subsection  
 7           and subsection (d) shall be applied as if such  
 8           first plan year were an initial determination  
 9           year, except that the plan may not be amended  
 10          in a manner inconsistent with the funding im-  
 11          provement plan in effect for the preceding plan  
 12          year until a new funding improvement plan is  
 13          adopted.

14          “(5) SPECIAL RULES FOR CERTAIN UNDER-  
 15          FUNDED PLANS.—

16               “(A) IN GENERAL.—Except as provided in  
 17               subparagraph (B), if the funded percentage of  
 18               a plan in seriously endangered status was 70  
 19               percent or less as of the beginning of the initial  
 20               determination year, the following rules shall  
 21               apply in determining whether the requirements  
 22               of paragraph (3)(C)(i) are met:

23                       “(i) The plan’s funded percentage as  
 24                       of the close of the funding improvement

1 period must equal or exceed a percentage  
 2 which is equal to the sum of—

3 “(I) such percentage as of the  
 4 beginning of such period, plus

5 “(II) 20 percent of the difference  
 6 between 100 percent and the percent-  
 7 age under subclause (I).

8 “(ii) The funding improvement period  
 9 under paragraph (4)(A) shall be 15 years  
 10 rather than 10 years.

11 “(B) SPECIAL RULES FOR PLANS WITH  
 12 FUNDED PERCENTAGE OVER 70 PERCENT.—If  
 13 the funded percentage described in subpara-  
 14 graph (A) was more than 70 percent but less  
 15 than 80 percent as of the beginning of the ini-  
 16 tial determination year—

17 “(i) subparagraph (A) shall apply if  
 18 the plan’s actuary certifies, within 30 days  
 19 after the certification under subsection  
 20 (b)(3)(A) for the initial determination  
 21 year, that, based on the terms of the plan  
 22 and the collective bargaining agreements in  
 23 effect at the time of such certification, the  
 24 plan is not projected to meet the require-

ments of paragraph (3)(C)(i) without regard to this paragraph, and

“(ii) if there is a certification under clause (i), the plan may, in formulating its funding improvement plan, only take into account the rules of subparagraph (A) for plan years in the funding improvement period beginning on or before the date on which the last of the collective bargaining agreements described in paragraph (4)(A)(ii) expires.

Notwithstanding clause (ii), if for any plan year ending after the date described in clause (ii) the plan actuary certifies (at the time of the annual certification under subsection (b)(3)(A) for such plan year) that, based on the terms of the plan and collective bargaining agreements in effect at the time of that annual certification, the plan is not projected to be able to meet the requirements of paragraph (3)(C)(i) without regard to this paragraph, the plan may continue to assume for such year that the funding improvement period is 15 years rather than 10 years.

“(6) UPDATES TO FUNDING IMPROVEMENT

PLAN AND SCHEDULES.—

1           “(A) FUNDING IMPROVEMENT PLAN.—The  
 2           plan sponsor shall annually update the funding  
 3           improvement plan and shall file the update with  
 4           the plan’s annual report under section 104.

5           “(B) SCHEDULES.—The plan sponsor may  
 6           periodically update any schedule of contribution  
 7           rates provided under this subsection to reflect  
 8           the experience of the plan, except that the  
 9           schedule or schedules described in paragraph  
 10          (1)(B)(i) shall be updated at least once every 3  
 11          years.

12          “(C) DURATION OF SCHEDULE.—A sched-  
 13          ule of contribution rates provided by the plan  
 14          sponsor and relied upon by bargaining parties  
 15          in negotiating a collective bargaining agreement  
 16          shall remain in effect for the duration of that  
 17          collective bargaining agreement.

18          “(7) PENALTY IF NO FUNDING IMPROVEMENT  
 19          PLAN ADOPTED.—A failure of the plan sponsor to  
 20          adopt a funding improvement plan by the date speci-  
 21          fied in paragraph (1)(A) shall be treated for pur-  
 22          poses of section 502(c)(2) as a failure or refusal by  
 23          the plan administrator to file the annual report re-  
 24          quired to be filed with the Secretary under section  
 25          101(b)(4).

1           “(8) FUNDING PLAN ADOPTION PERIOD.—For  
 2           purposes of this section, the term ‘funding plan  
 3           adoption period’ means the period beginning on the  
 4           date of the certification under subsection (b)(3)(A)  
 5           for the initial determination year and ending on the  
 6           day before the first day of the funding improvement  
 7           period.

8           “(d) RULES FOR OPERATION OF PLAN DURING  
 9           ADOPTION AND IMPROVEMENT PERIODS; FAILURE TO  
 10          MEET REQUIREMENTS.—

11           “(1) SPECIAL RULES FOR PLAN ADOPTION PE-  
 12          RIOD.—During the plan adoption period—

13           “(A) the plan sponsor may not accept a  
 14           collective bargaining agreement or participation  
 15           agreement with respect to the multiemployer  
 16           plan that provides for—

17           “(i) a reduction in the level of con-  
 18           tributions for any participants,

19           “(ii) a suspension of contributions  
 20           with respect to any period of service, or

21           “(iii) any new direct or indirect exclu-  
 22           sion of younger or newly hired employees  
 23           from plan participation,

24           “(B) no amendment of the plan which in-  
 25           creases the liabilities of the plan by reason of



any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan may be adopted unless the amendment is required as a condition of qualification under part I of subchapter D of chapter 1 of the Internal Revenue Code of 1986 or to comply with other applicable law, and

“(C) in the case of a plan in seriously endangered status, the plan sponsor shall take all reasonable actions which are consistent with the terms of the plan and applicable law and which are expected, based on reasonable assumptions, to achieve—

“(i) an increase in the plan’s funded percentage, and

“(ii) postponement of an accumulated funding deficiency for at least 1 additional plan year.

Actions under subparagraph (C) include applications for extensions of amortization periods under section 304(d), use of the shortfall funding method in making funding standard account computations, amendments to the plan’s benefit structure, reductions in future benefit accruals, and other reasonable actions

1 consistent with the terms of the plan and applicable  
 2 law.

3 “(2) COMPLIANCE WITH FUNDING IMPROVE-  
 4 MENT PLAN.—

5 “(A) IN GENERAL.—A plan may not be  
 6 amended after the date of the adoption of a  
 7 funding improvement plan under subsection (c)  
 8 so as to be inconsistent with the funding im-  
 9 provement plan.

10 “(B) NO REDUCTION IN CONTRIBU-  
 11 TIONS.—A plan sponsor may not during any  
 12 funding improvement period accept a collective  
 13 bargaining agreement or participation agree-  
 14 ment with respect to the multiemployer plan  
 15 that provides for—

16 “(i) a reduction in the level of con-  
 17 tributions for any participants,

18 “(ii) a suspension of contributions  
 19 with respect to any period of service, or

20 “(iii) any new direct or indirect exclu-  
 21 sion of younger or newly hired employees  
 22 from plan participation.

23 “(C) SPECIAL RULES FOR BENEFIT IN-  
 24 CREASES.—A plan may not be amended after  
 25 the date of the adoption of a funding improve-

ment plan under subsection (c) so as to increase benefits, including future benefit accruals, unless—

“(i) in the case of a plan in seriously endangered status, the plan actuary certifies that, after taking into account the benefit increase, the plan is still reasonably expected to meet the requirements under subsection (c)(3) in accordance with the schedule contemplated in the funding improvement plan, and

“(ii) in the case of a plan not in seriously endangered status, the actuary certifies that such increase is paid for out of contributions not required by the funding improvement plan to meet the requirements under subsection (c)(3) in accordance with the schedule contemplated in the funding improvement plan.

“(3) FAILURE TO MEET REQUIREMENTS.—

“(A) IN GENERAL.—Notwithstanding section 4971(g) of the Internal Revenue Code of 1986, if a plan fails to meet the requirements of subsection (c)(3) by the end of the funding improvement period, the plan shall be treated

as having an accumulated funding deficiency for purposes of section 4971 of such Code for the last plan year in such period (and each succeeding plan year until such requirements are met) in an amount equal to the greater of the amount of the contributions necessary to meet such requirements or the amount of such accumulated funding deficiency without regard to this paragraph.

“(B) WAIVER.—In the case of a failure described in subparagraph (A) which is due to reasonable cause and not to willful neglect, the Secretary of the Treasury may waive part or all of the tax imposed by section 4971 of such Code to the extent that the payment of such tax would be excessive or otherwise inequitable relative to the failure involved.

“(e) REHABILITATION PLAN MUST BE ADOPTED FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

“(1) IN GENERAL.—In any case in which a multiemployer plan is in critical status for a plan year, the plan sponsor, in accordance with this subsection—

“(A) shall adopt a rehabilitation plan not later than 240 days following the required date

1           for the actuarial certification of critical status  
 2           under subsection (b)(3)(A), and

3           “(B) within 30 days after the adoption of  
 4           the rehabilitation plan—

5           “(i) shall provide to the bargaining  
 6           parties 1 or more schedules showing re-  
 7           vised benefit structures, revised contribu-  
 8           tion structures, or both, which, if adopted,  
 9           may reasonably be expected to enable the  
 10          multiemployer plan to emerge from critical  
 11          status in accordance with the rehabilitation  
 12          plan, and

13          “(ii) may, if the plan sponsor deems  
 14          appropriate, prepare and provide the bar-  
 15          gaining parties with additional information  
 16          relating to contribution rates or benefit re-  
 17          ductions, alternative schedules, or other in-  
 18          formation relevant to emerging from crit-  
 19          ical status in accordance with the rehabili-  
 20          tation plan.

21          The schedule or schedules described in subparagraph  
 22          (B)(i) shall reflect reductions in future benefit ac-  
 23          cruals and increases in contributions that the plan  
 24          sponsor determines are reasonably necessary to  
 25          emerge from critical status. One schedule shall be

1 designated as the default schedule and such schedule  
 2 shall assume that there are no increases in contribu-  
 3 tions under the plan other than the increases nec-  
 4 essary to emerge from critical status after future  
 5 benefit accruals and other benefits (other than bene-  
 6 fits the reduction or elimination of which are not  
 7 permitted under section 204(g)) have been reduced  
 8 to the maximum extent permitted by law.

9 “(2) EXCEPTION FOR YEARS AFTER PROCESS  
 10 BEGINS.—Paragraph (1) shall not apply to a plan  
 11 year if such year is in a rehabilitation plan adoption  
 12 period or rehabilitation period by reason of the plan  
 13 being in critical status for a preceding plan year.  
 14 For purposes of this section, such preceding plan  
 15 year shall be the initial critical year with respect to  
 16 the rehabilitation plan to which it relates.

17 “(3) REHABILITATION PLAN.—For purposes of  
 18 this section—

19 “(A) IN GENERAL.—A rehabilitation plan  
 20 is a plan which consists of—

21 “(i) actions which will enable, under  
 22 reasonable actuarial assumptions, the plan  
 23 to cease to be in critical status by the end  
 24 of the rehabilitation period and may in-  
 25 clude reductions in plan expenditures (in-

cluding plan mergers and consolidations),  
reductions in future benefit accruals or in-  
creases in contributions, if agreed to by the  
bargaining parties, or any combination of  
such actions, or

“(ii) if the plan sponsor determines  
that, based on reasonable actuarial as-  
sumptions and upon exhaustion of all rea-  
sonable measures, the plan can not reason-  
ably be expected to emerge from critical  
status by the end of the rehabilitation pe-  
riod, reasonable measures to emerge from  
critical status at a later time or to forestall  
possible insolvency (within the meaning of  
section 4245).

Such plan shall include the schedules required  
to be provided under paragraph (1)(B)(i). If  
clause (ii) applies, such plan shall set forth the  
alternatives considered, explain why the plan is  
not reasonably expected to emerge from critical  
status by the end of the rehabilitation period,  
and specify when, if ever, the plan is expected  
to emerge from critical status in accordance  
with the rehabilitation plan.

1           “(B) UPDATES TO REHABILITATION PLAN  
2           AND SCHEDULES.—

3           “(i) REHABILITATION PLAN.—The  
4           plan sponsor shall annually update the re-  
5           habilitation plan and shall file the update  
6           with the plan’s annual report under section  
7           104.

8           “(ii) SCHEDULES.—The plan sponsor  
9           may periodically update any schedule of  
10          contribution rates provided under this sub-  
11          section to reflect the experience of the  
12          plan, except that the schedule or schedules  
13          described in paragraph (1)(B)(i) shall be  
14          updated at least once every 3 years.

15          “(iii) DURATION OF SCHEDULE.—A  
16          schedule of contribution rates provided by  
17          the plan sponsor and relied upon by bar-  
18          gaining parties in negotiating a collective  
19          bargaining agreement shall remain in ef-  
20          fect for the duration of that collective bar-  
21          gaining agreement.

22          “(C) DEFAULT SCHEDULE.—If the collec-  
23          tive bargaining agreement providing for con-  
24          tributions under a multiemployer plan that was  
25          in effect at the time the plan entered critical



1 status expires and, after receiving a schedule  
2 from the plan sponsor under paragraph  
3 (1)(B)(i), the bargaining parties have not  
4 adopted a collective bargaining agreement with  
5 terms consistent with such a schedule, the de-  
6 fault schedule described in the last sentence of  
7 paragraph (1) shall go into effect with respect  
8 to those bargaining parties.

9 “(4) REHABILITATION PERIOD.—For purposes  
10 of this section—

11 “(A) IN GENERAL.—The rehabilitation pe-  
12 riod for a plan in critical status is the 10-year  
13 period beginning on the first day of the first  
14 plan year of the multiemployer plan following  
15 the earlier of—

16 “(i) the second anniversary of the  
17 date of the adoption of the rehabilitation  
18 plan, or

19 “(ii) the expiration of the collective  
20 bargaining agreements in effect on the  
21 date of the due date for the actuarial cer-  
22 tification of critical status for the initial  
23 critical year under subsection (a)(1) and  
24 covering, as of such date at least 75 per-

1                   cent of the active participants in such mul-  
2                   tiemployer plan.

3                   If a plan emerges from critical status as pro-  
4                   vided under subparagraph (B) before the end of  
5                   such 10-year period, the rehabilitation period  
6                   shall end with the plan year preceding the plan  
7                   year for which the determination under sub-  
8                   paragraph (B) is made.

9                   “(B) EMERGENCE.—A plan in critical sta-  
10                  tus shall remain in such status until a plan  
11                  year for which the plan actuary certifies, in ac-  
12                  cordance with subsection (b)(3)(A), that the  
13                  plan is not projected to have an accumulated  
14                  funding deficiency for the plan year or any of  
15                  the 9 succeeding plan years, without regard to  
16                  use of the shortfall method or any extension of  
17                  amortization periods under section 304(d).

18                  “(5) PENALTY IF NO REHABILITATION PLAN  
19                  ADOPTED.—A failure of a plan sponsor to adopt a  
20                  rehabilitation plan by the date specified in para-  
21                  graph (1)(A) shall be treated for purposes of section  
22                  502(c)(2) as a failure or refusal by the plan admin-  
23                  istrator to file the annual report required to be filed  
24                  with the Secretary under section 101(b)(4).

1           “(6) REHABILITATION PLAN ADOPTION PE-  
 2           RIOD.—For purposes of this section, the term ‘reha-  
 3           bilitation plan adoption period’ means the period be-  
 4           ginning on the date of the certification under sub-  
 5           section (b)(3)(A) for the initial critical year and end-  
 6           ing on the day before the first day of the rehabilita-  
 7           tion period.

8           “(7) LIMITATION ON REDUCTION IN RATES OF  
 9           FUTURE ACCRUALS.—Any reduction in the rate of  
 10          future accruals under any schedule described in  
 11          paragraph (1)(B)(i) shall not reduce the rate of fu-  
 12          ture accruals below—

13               “(A) a monthly benefit (payable as a single  
 14               life annuity commencing at the participant’s  
 15               normal retirement age) equal to 1 percent of  
 16               the contributions required to be made with re-  
 17               spect to a participant, or the equivalent stand-  
 18               ard accrual rate for a participant or group of  
 19               participants under the collective bargaining  
 20               agreements in effect as of the first day of the  
 21               initial critical year, or

22               “(B) if lower, the accrual rate under the  
 23               plan on such first day.

24          The equivalent standard accrual rate shall be deter-  
 25          mined by the plan sponsor based on the standard or

1       average contribution base units which the plan spon-  
 2       sor determines to be representative for active partici-  
 3       pants and such other factors as the plan sponsor de-  
 4       termines to be relevant. Nothing in this paragraph  
 5       shall be construed as limiting the ability of the plan  
 6       sponsor to prepare and provide the bargaining par-  
 7       ties with alternative schedules to the default sched-  
 8       ule that established lower or higher accrual and con-  
 9       tribution rates than the rates otherwise described in  
 10      this paragraph.

11           “(8) EMPLOYER IMPACT.—For the purposes of  
 12      this section, the plan sponsor shall consider the im-  
 13      pact of the rehabilitation plan and contribution  
 14      schedules authorized by this section on bargaining  
 15      parties with fewer than 500 employees and shall im-  
 16      plement the plan in a manner that encourages their  
 17      continued participation in the plan and minimizes fi-  
 18      nancial harm to employers and their workers.

19           “(f) RULES FOR OPERATION OF PLAN DURING  
 20      ADOPTION AND REHABILITATION PERIOD.—

21           “(1) COMPLIANCE WITH REHABILITATION  
 22      PLAN.—

23           “(A) IN GENERAL.—A plan may not be  
 24      amended after the date of the adoption of a re-

1           habilitation plan under subsection (e) so as to  
2           be inconsistent with the rehabilitation plan.

3           “(B) SPECIAL RULES FOR BENEFIT IN-  
4           CREASES.—A plan may not be amended after  
5           the date of the adoption of a rehabilitation plan  
6           under subsection (e) so as to increase benefits,  
7           including future benefit accruals, unless the  
8           plan actuary certifies that such increase is paid  
9           for out of additional contributions not con-  
10          templated by the rehabilitation plan, and, after  
11          taking into account the benefit increase, the  
12          multiemployer plan still is reasonably expected  
13          to emerge from critical status by the end of the  
14          rehabilitation period on the schedule con-  
15          templated in the rehabilitation plan.

16          “(2) RESTRICTION ON LUMP SUMS AND SIMI-  
17          LAR BENEFITS.—

18                 “(A) IN GENERAL.—Effective on the date  
19                 the notice of certification of the plan’s critical  
20                 status for the initial critical year under sub-  
21                 section (b)(3)(D) is sent, and notwithstanding  
22                 section 204(g), the plan shall not pay—

23                         “(i) any payment, in excess of the  
24                         monthly amount paid under a single life  
25                         annuity (plus any social security supple-

1           ments described in the last sentence of sec-  
2           tion 204(b)(1)(G)),

3           “(ii) any payment for the purchase of  
4           an irrevocable commitment from an insurer  
5           to pay benefits, and

6           “(iii) any other payment specified by  
7           the Secretary of the Treasury by regula-  
8           tions.

9           “(B)   EXCEPTION.—Subparagraph   (A)  
10          shall not apply to a benefit which under section  
11          203(e) may be immediately distributed without  
12          the consent of the participant or to any makeup  
13          payment in the case of a retroactive annuity  
14          starting date or any similar payment of benefits  
15          owed with respect to a prior period.

16          “(3) ADJUSTMENTS DISREGARDED IN WITH-  
17          DRAWAL LIABILITY DETERMINATION.—Any benefit  
18          reductions under this subsection shall be disregarded  
19          in determining a plan’s unfunded vested benefits for  
20          purposes of determining an employer’s withdrawal li-  
21          ability under section 4201.

22          “(4) SPECIAL RULES FOR PLAN ADOPTION PE-  
23          RIOD.—During the rehabilitation plan adoption  
24          period—

1           “(A) the plan sponsor may not accept a  
2           collective bargaining agreement or participation  
3           agreement with respect to the multiemployer  
4           plan that provides for—

5                   “(i) a reduction in the level of con-  
6                   tributions for any participants,

7                   “(ii) a suspension of contributions  
8                   with respect to any period of service, or

9                   “(iii) any new direct or indirect exclu-  
10                  sion of younger or newly hired employees  
11                  from plan participation, and

12           “(B) no amendment of the plan which in-  
13           creases the liabilities of the plan by reason of  
14           any increase in benefits, any change in the ac-  
15           crual of benefits, or any change in the rate at  
16           which benefits become nonforfeitable under the  
17           plan may be adopted unless the amendment is  
18           required as a condition of qualification under  
19           part I of subchapter D of chapter 1 of the In-  
20           ternal Revenue Code of 1986 or to comply with  
21           other applicable law.

22           “(5) FAILURE TO MEET REQUIREMENTS.—

23                   “(A) IN GENERAL.—Notwithstanding sec-  
24                   tion 4971(g) of the Internal Revenue Code of  
25                   1986, if a plan—

1 “(i) fails to meet the requirements of  
2 subsection (e) by the end of the rehabilita-  
3 tion period, or

4 “(ii) has received a certification under  
5 subsection (b)(3)(A)(ii) for 3 consecutive  
6 plan years that the plan is not making the  
7 scheduled progress in meeting its require-  
8 ments under the rehabilitation plan,

9 the plan shall be treated as having an accumu-  
10 lated funding deficiency for purposes of section  
11 4971 of such Code for the last plan year in  
12 such period (and each succeeding plan year  
13 until such requirements are met) in an amount  
14 equal to the greater of the amount of the con-  
15 tributions necessary to meet such requirements  
16 or the amount of such accumulated funding de-  
17 ficiency without regard to this paragraph.

18 “(B) WAIVER.—In the case of a failure de-  
19 scribed in subparagraph (A) which is due to  
20 reasonable cause and not to willful neglect, the  
21 Secretary of the Treasury may waive part or all  
22 of the tax imposed by section 4971 of such  
23 Code to the extent that the payment of such tax  
24 would be excessive or otherwise inequitable rel-  
25 ative to the failure involved.



1       “(g) EXPEDITED RESOLUTION OF PLAN SPONSOR  
 2 DECISIONS.—If, within 60 days of the due date for adop-  
 3 tion of a funding improvement plan under subsection (c)  
 4 or a rehabilitation plan under subsection (e), the plan  
 5 sponsor of a plan in endangered status or a plan in critical  
 6 status has not agreed on a funding improvement plan or  
 7 rehabilitation plan, then any member of the board or  
 8 group that constitutes the plan sponsor may require that  
 9 the plan sponsor enter into an expedited dispute resolution  
 10 procedure for the development and adoption of a funding  
 11 improvement plan or rehabilitation plan.

12       “(h) NONBARGAINED PARTICIPATION.—

13               “(1) BOTH BARGAINED AND NONBARGAINED  
 14 EMPLOYEE-PARTICIPANTS.—In the case of an em-  
 15 ployer that contributes to a multiemployer plan with  
 16 respect to both employees who are covered by one or  
 17 more collective bargaining agreements and to em-  
 18 ployees who are not so covered, if the plan is in en-  
 19 dangered status or in critical status, benefits of and  
 20 contributions for the nonbargained employees, in-  
 21 cluding surcharges on those contributions, shall be  
 22 determined as if those nonbargained employees were  
 23 covered under the first to expire of the employer’s  
 24 collective bargaining agreements in effect when the  
 25 plan entered endangered or critical status.

1           “(2) NONBARGAINED EMPLOYEES ONLY.—In  
 2           the case of an employer that contributes to a multi-  
 3           employer plan only with respect to employees who  
 4           are not covered by a collective bargaining agreement,  
 5           this section shall be applied as if the employer were  
 6           the bargaining parties, and its participation agree-  
 7           ment with the plan was a collective bargaining  
 8           agreement with a term ending on the first day of the  
 9           plan year beginning after the employer is provided  
 10          the schedule or schedules described in subsections  
 11          (c) and (e).

12           “(3) EMPLOYEES COVERED BY A COLLECTIVE  
 13          BARGAINING AGREEMENT.—The determination as to  
 14          whether an employee covered by a collective bar-  
 15          gaining agreement for purposes of this section shall  
 16          be made without regard to the special rule in Treas-  
 17          ury Regulation section 1.410(b)–6(d)(ii)(D).

18          “(i) DEFINITIONS; ACTUARIAL METHOD.—For pur-  
 19          poses of this section—

20               “(1) BARGAINING PARTY.—The term ‘bar-  
 21               gaining party’ means—

22                       “(A)(i) except as provided in clause (ii), an  
 23                       employer who has an obligation to contribute  
 24                       under the plan; or

1           “(ii) in the case of a plan described under  
 2           section 404(c) of the Internal Revenue Code of  
 3           1986, or a continuation of such a plan, the as-  
 4           sociation of employers that is the employee set-  
 5           tlor of the plan; and

6           “(B) an employee organization which, for  
 7           purposes of collective bargaining, represents  
 8           plan participants employed by an employer who  
 9           has an obligation to contribute under the plan.

10          “(2) FUNDED PERCENTAGE.—The term ‘fund-  
 11          ed percentage’ means the percentage equal to a  
 12          fraction—

13               “(A) the numerator of which is the value  
 14               of the plan’s assets, as determined under sec-  
 15               tion 304(c)(2), and

16               “(B) the denominator of which is the ac-  
 17               crued liability of the plan, determined using ac-  
 18               tuarial assumptions described in section  
 19               304(c)(3).

20          “(3) ACCUMULATED FUNDING DEFICIENCY.—  
 21          The term ‘accumulated funding deficiency’ has the  
 22          meaning given such term in section 304(a).

23          “(4) ACTIVE PARTICIPANT.—The term ‘active  
 24          participant’ means, in connection with a multiem-

1        ployer plan, a participant who is in covered service  
2        under the plan.

3            “(5) INACTIVE PARTICIPANT.—The term ‘inac-  
4        tive participant’ means, in connection with a multi-  
5        employer plan, a participant, or the beneficiary or  
6        alternate payee of a participant, who—

7            “(A) is not in covered service under the  
8        plan, and

9            “(B) is in pay status under the plan or has  
10       a nonforfeitable right to benefits under the  
11       plan.

12          “(6) PAY STATUS.—A person is in pay status  
13       under a multiemployer plan if—

14          “(A) at any time during the current plan  
15       year, such person is a participant or beneficiary  
16       under the plan and is paid an early, late, nor-  
17       mal, or disability retirement benefit under the  
18       plan (or a death benefit under the plan related  
19       to a retirement benefit), or

20          “(B) to the extent provided in regulations  
21       of the Secretary of the Treasury, such person  
22       is entitled to such a benefit under the plan.

23          “(7) OBLIGATION TO CONTRIBUTE.—The term  
24       ‘obligation to contribute’ has the meaning given such  
25       term under section 4212(a).

1           “(8) ACTUARIAL METHOD.—Notwithstanding  
 2           any other provision of this section, the actuary’s de-  
 3           terminations with respect to a plan’s normal cost,  
 4           actuarial accrued liability, and improvements in a  
 5           plan’s funded percentage under this section shall be  
 6           based upon the unit credit funding method (whether  
 7           or not that method is used for the plan’s actuarial  
 8           valuation).

9           “(9) PLAN SPONSOR.—In the case of a plan de-  
 10          scribed under section 404(c) of the Internal Revenue  
 11          Code of 1986, or a continuation of such a plan, the  
 12          term ‘plan sponsor’ means the bargaining parties de-  
 13          scribed under paragraph (1).”.

14          (b) CAUSE OF ACTION TO COMPEL ADOPTION OF  
 15          FUNDING IMPROVEMENT OR REHABILITATION PLAN.—  
 16          Section 502(a) of the Employee Retirement Income Secu-  
 17          rity Act of 1974 is amended by striking “or” at the end  
 18          of paragraph (8), by striking the period at the end of para-  
 19          graph (9) and inserting “; or” and by adding at the end  
 20          the following:

21               “(10) in the case of a multiemployer plan that  
 22               has been certified by the actuary to be in endan-  
 23               gered or critical status under section 305, if the plan  
 24               sponsor has not adopted a funding improvement or  
 25               rehabilitation plan under subsection (c) or (e) of

1       that section by the deadline established in that sec-  
 2       tion, by an employer that has an obligation to con-  
 3       tribute with respect to the multiemployer plan or an  
 4       employee organization that represents active partici-  
 5       pants in the multiemployer plan, for an order com-  
 6       pelling the plan sponsor to adopt a funding improve-  
 7       ment or rehabilitation plan.”.

8       (c) 4971 EXCISE TAX INAPPLICABLE.—Section 4971  
 9       of the Internal Revenue Code of 1986 is amended by re-  
 10      designating subsection (g) as subsection (h), and inserting  
 11      after subsection (f) the following:

12      “(g) MULTIEMPLOYER PLANS IN CRITICAL STA-  
 13      TUS.—No tax shall be imposed under this section for a  
 14      taxable year with respect to a multiemployer plan if, for  
 15      the plan years ending with or within the taxable year, the  
 16      plan is in critical status pursuant to section 305 of the  
 17      Employee Retirement Income Security Act of 1974. This  
 18      subsection shall only apply if the plan adopts a rehabilita-  
 19      tion plan in accordance with section 305(e) of such Act  
 20      and complies with such rehabilitation plan (and any modi-  
 21      fications of the plan) and shall not apply if an excise tax  
 22      is required to be imposed under this section by reason of  
 23      a violation of such section 305.”.

24      (d) NO ADDITIONAL CONTRIBUTIONS REQUIRED.—

1           (1) Section 302(b) of the Employee Retirement  
 2           Income Security Act of 1974, as amended by this  
 3           Act , is amended by adding at the end the following  
 4           new paragraph:

5           “(3) MULTIEMPLOYER PLANS IN CRITICAL STA-  
 6           TUS.—Subparagraph (A) shall not apply in the case  
 7           of a multiemployer plan for any plan year in which  
 8           the plan is in critical status pursuant to section 305.  
 9           This paragraph shall only apply if the plan adopts  
 10          a rehabilitation plan in accordance with section  
 11          305(e) and complies with such rehabilitation plan  
 12          (and any modifications of the plan).”.

13          (2) Section 412(c) of the Internal Revenue  
 14          Code of 1986, as amended by this Act, is amended  
 15          by adding at the end the following new paragraph:

16          “(3) MULTIEMPLOYER PLANS IN CRITICAL STA-  
 17          TUS.—Subparagraph (A) shall not apply in the case  
 18          of a multiemployer plan for any plan year in which  
 19          the plan is in critical status pursuant to section 305  
 20          of the Employee Retirement Income Security Act of  
 21          1974. This paragraph shall only apply if the plan  
 22          adopts a rehabilitation plan in accordance with sec-  
 23          tion 305(e) of such Act and complies with such re-  
 24          habilitation plan (and any modifications of the  
 25          plan).”.

1 (e) CONFORMING AMENDMENT.—The table of con-  
 2 tents in section 1 of such Act (as amended by the pre-  
 3 ceding provisions of this Act) is amended by inserting  
 4 after the item relating to section 304 the following new  
 5 item:

“Sec. 305. Additional funding rules for multiemployer plans in endangered sta-  
 tus or critical status.”.

6 (f) EFFECTIVE DATES.—

7 (1) IN GENERAL.—The amendment made by  
 8 this section shall apply with respect to plan years be-  
 9 ginning after 2006.

10 (2) SPECIAL RULE FOR CERTAIN RESTORED  
 11 BENEFITS.—In the case of a multiemployer plan—

12 (A) with respect to which benefits were re-  
 13 duced pursuant to a plan amendment adopted  
 14 on or after January 1, 2002, and before June  
 15 30, 2005, and

16 (B) which, pursuant to the plan document,  
 17 the trust agreement, or a formal written com-  
 18 munication from the plan sponsor to partici-  
 19 pants provided before June 30, 2005, provided  
 20 for the restoration of such benefits,

21 the amendments made by this section shall not apply  
 22 to such benefit restorations to the extent that any  
 23 restriction on the providing or accrual of such bene-



1 fits would otherwise apply by reason of such amend-  
 2 ments.

3 **SEC. 203. MEASURES TO FORESTALL INSOLVENCY OF MUL-**  
 4 **TIEMPLOYER PLANS.**

5 (a) ADVANCE DETERMINATION OF IMPENDING IN-  
 6 SOLVENCY OVER 5 YEARS.—Section 4245(d)(1) of the  
 7 Employee Retirement Income Security Act of 1974 (29  
 8 U.S.C. 1426(d)(1)) is amended—

9 (1) by striking “3 plan years” the second place  
 10 it appears and inserting “5 plan years”; and

11 (2) by adding at the end the following new sen-  
 12 tence: “If the plan sponsor makes such a determina-  
 13 tion that the plan will be insolvent in any of the next  
 14 5 plan years, the plan sponsor shall make the com-  
 15 parison under this paragraph at least annually until  
 16 the plan sponsor makes a determination that the  
 17 plan will not be insolvent in any of the next 5 plan  
 18 years.”.

19 (b) EFFECTIVE DATE.—The amendments made by  
 20 this section shall apply with respect to determinations  
 21 made in plan years beginning after 2006.

1 **SEC. 204. SPECIAL RULE FOR CERTAIN BENEFITS FUNDED**  
2 **UNDER AN AGREEMENT APPROVED BY THE**  
3 **PENSION BENEFIT GUARANTY CORPORA-**  
4 **TION.**

5 In the case of a multiemployer plan that is a party  
6 to an agreement that was approved by the Pension Benefit  
7 Guaranty Corporation prior to June 30, 2005, and that—

8 (1) increases benefits, and

9 (2) provides for special withdrawal liability  
10 rules under section 4203(f) of the Employee Retirement  
11 Income Security Act of 1974 (29 U.S.C.  
12 1383),

13 the amendments made by sections 201, 202, 211, and 212  
14 of this Act shall not apply to the benefit increases under  
15 any plan amendment adopted prior to June 30, 2005, that  
16 are funded pursuant to such agreement if the plan is fund-  
17 ed in compliance with such agreement (and any amend-  
18 ments thereto).

19 **SEC. 205. WITHDRAWAL LIABILITY REFORMS.**

20 (a) **REPEAL OF LIMITATION ON WITHDRAWAL LI-**  
21 **ABILITY OF INSOLVENT EMPLOYERS.—**

22 (1) **IN GENERAL.**—Subsections (b) and (d) of  
23 section 4225 of the Employee Retirement Income  
24 Security Act of 1974 (29 U.S.C. 1405) are repealed.

1           (2) CONFORMING AMENDMENTS.—Subsections  
2           (c) and (e) of section 4225 of such Act are redesign-  
3           nated as subsections (b) and (c), respectively.

4           (3) EFFECTIVE DATE.—The amendments made  
5           by this section shall apply with respect to sales oc-  
6           curring on or after January 1, 2006.

7           (b) WITHDRAWAL LIABILITY CONTINUES IF WORK  
8           CONTRACTED OUT.—

9           (1) IN GENERAL.—Clause (i) of section  
10          4205(b)(2)(A) of such Act (29 U.S.C.  
11          1385(b)(2)(A)) is amended by inserting “or to an  
12          entity or entities owned or controlled by the em-  
13          ployer” after “to another location”.

14          (2) EFFECTIVE DATE.—The amendment made  
15          by this subsection shall apply with respect to work  
16          transferred on or after the date of the enactment of  
17          this Act.

18          (c) APPLICATION OF FORGIVENESS RULE TO PLANS  
19          PRIMARILY COVERING EMPLOYEES IN THE BUILDING  
20          AND CONSTRUCTION.—

21          (1) IN GENERAL.—Section 4210(b) of such Act  
22          (29 U.S.C. 1390(b)) is amended—

23                 (A) by striking paragraph (1); and

1 (B) by redesignating paragraphs (2)  
 2 through (4) as paragraphs (1) through (3), re-  
 3 spectively.

4 (2) EFFECTIVE DATE.—The amendments made  
 5 by this subsection shall apply with respect to plan  
 6 withdrawals occurring on or after January 1, 2006.

7 **PART II—AMENDMENTS TO INTERNAL REVENUE**

8 **CODE OF 1986**

9 **SEC. 211. FUNDING RULES FOR MULTIEMPLOYER DEFINED**  
 10 **BENEFIT PLANS.**

11 (a) IN GENERAL.—Subpart A of part III of sub-  
 12 chapter D of chapter 1 of the Internal Revenue Code of  
 13 1986 (as added by this Act) is amended by inserting after  
 14 section 430 the following new section:

15 **“SEC. 431. MINIMUM FUNDING STANDARDS FOR MULTIEM-**  
 16 **PLOYER PLANS.**

17 “(a) IN GENERAL.—For purposes of section 412, the  
 18 accumulated funding deficiency of a multiemployer plan  
 19 for any plan year is—

20 “(1) except as provided in paragraph (2), the  
 21 amount, determined as of the end of the plan year,  
 22 equal to the excess (if any) of the total charges to  
 23 the funding standard account of the plan for all plan  
 24 years (beginning with the first plan year for which

1       this part applies to the plan) over the total credits  
2       to such account for such years, and

3               “(2) if the multiemployer plan is in reorganiza-  
4       tion for any plan year, the accumulated funding de-  
5       ficiency of the plan determined under section 4243  
6       of the Employee Retirement Income Security Act of  
7       1974.

8       “(b) FUNDING STANDARD ACCOUNT.—

9               “(1) ACCOUNT REQUIRED.—Each multiem-  
10      ployer plan to which this part applies shall establish  
11      and maintain a funding standard account. Such ac-  
12      count shall be credited and charged solely as pro-  
13      vided in this section.

14              “(2) CHARGES TO ACCOUNT.—For a plan year,  
15      the funding standard account shall be charged with  
16      the sum of—

17                      “(A) the normal cost of the plan for the  
18                      plan year,

19                      “(B) the amounts necessary to amortize in  
20                      equal annual installments (until fully amor-  
21                      tized)—

22                              “(i) separately, with respect to each  
23                              plan year, the net increase (if any) in un-  
24                              funded past service liability under the plan

1           arising from plan amendments adopted in  
2           such year, over a period of 15 plan years,  
3           “(ii) separately, with respect to each  
4           plan year, the net experience loss (if any)  
5           under the plan, over a period of 15 plan  
6           years, and

7           “(iii) separately, with respect to each  
8           plan year, the net loss (if any) resulting  
9           from changes in actuarial assumptions  
10          used under the plan, over a period of 15  
11          plan years,

12          “(C) the amount necessary to amortize  
13          each waived funding deficiency (within the  
14          meaning of section 412(d)(3)) for each prior  
15          plan year in equal annual installments (until  
16          fully amortized) over a period of 15 plan years,

17          “(D) the amount necessary to amortize in  
18          equal annual installments (until fully amor-  
19          tized) over a period of 5 plan years any amount  
20          credited to the funding standard account under  
21          section 412(b)(3)(D) (as in effect on the day  
22          before the date of the enactment of the Pension  
23          Security and Transparency Act of 2005), and

24          “(E) the amount necessary to amortize in  
25          equal annual installments (until fully amor-

1           tized) over a period of 20 years the contribu-  
 2           tions which would be required to be made under  
 3           the plan but for the provisions of section  
 4           412(c)(7)(A)(i)(I) (as in effect on the day be-  
 5           fore the date of the enactment of the Pension  
 6           Security and Transparency Act of 2005).

7           “(3) CREDITS TO ACCOUNT.—For a plan year,  
 8           the funding standard account shall be credited with  
 9           the sum of—

10                   “(A) the amount considered contributed by  
 11                   the employer to or under the plan for the plan  
 12                   year,

13                   “(B) the amount necessary to amortize in  
 14                   equal annual installments (until fully amor-  
 15                   tized)—

16                           “(i) separately, with respect to each  
 17                           plan year, the net decrease (if any) in un-  
 18                           funded past service liability under the plan  
 19                           arising from plan amendments adopted in  
 20                           such year, over a period of 15 plan years,

21                           “(ii) separately, with respect to each  
 22                           plan year, the net experience gain (if any)  
 23                           under the plan, over a period of 15 plan  
 24                           years, and

1 “(iii) separately, with respect to each  
 2 plan year, the net gain (if any) resulting  
 3 from changes in actuarial assumptions  
 4 used under the plan, over a period of 15  
 5 plan years,

6 “(C) the amount of the waived funding de-  
 7 ficiency (within the meaning of section  
 8 412(d)(3)) for the plan year, and

9 “(D) in the case of a plan year for which  
 10 the accumulated funding deficiency is deter-  
 11 mined under the funding standard account if  
 12 such plan year follows a plan year for which  
 13 such deficiency was determined under the alter-  
 14 native minimum funding standard under section  
 15 412(g) (as in effect on the day before the date  
 16 of the enactment of the Pension Security and  
 17 Transparency Act of 2005), the excess (if any)  
 18 of any debit balance in the funding standard  
 19 account (determined without regard to this sub-  
 20 paragraph) over any debit balance in the alter-  
 21 native minimum funding standard account.

22 “(4) SPECIAL RULE FOR AMOUNTS FIRST AM-  
 23 ORTIZED TO PLAN YEARS BEFORE 2007.—In the case  
 24 of any amount amortized under section 412(b) (as  
 25 in effect on the day before the date of the enactment



1 of the Pension Security and Transparency Act of  
 2 2005) over any period beginning with a plan year  
 3 beginning before 2007, in lieu of the amortization  
 4 described in paragraphs (2)(B) and (3)(B), such  
 5 amount shall continue to be amortized under such  
 6 section as so in effect.

7 “(5) COMBINING AND OFFSETTING AMOUNTS  
 8 TO BE AMORTIZED.—Under regulations prescribed  
 9 by the Secretary, amounts required to be amortized  
 10 under paragraph (2) or paragraph (3), as the case  
 11 may be—

12 “(A) may be combined into one amount  
 13 under such paragraph to be amortized over a  
 14 period determined on the basis of the remaining  
 15 amortization period for all items entering into  
 16 such combined amount, and

17 “(B) may be offset against amounts re-  
 18 quired to be amortized under the other such  
 19 paragraph, with the resulting amount to be am-  
 20 ortized over a period determined on the basis of  
 21 the remaining amortization periods for all items  
 22 entering into whichever of the two amounts  
 23 being offset is the greater.

24 “(6) INTEREST.—The funding standard ac-  
 25 count (and items therein) shall be charged or cred-

1       ited (as determined under regulations prescribed by  
 2       the Secretary of the Treasury) with interest at the  
 3       appropriate rate consistent with the rate or rates of  
 4       interest used under the plan to determine costs.

5           “(7) SPECIAL RULES RELATING TO CHARGES  
 6       AND CREDITS TO FUNDING STANDARD ACCOUNT.—  
 7       For purposes of this part—

8           “(A)     WITHDRAWAL     LIABILITY.—Any  
 9       amount received by a multiemployer plan in  
 10      payment of all or part of an employer’s with-  
 11      drawal liability under part 1 of subtitle E of  
 12      title IV of the Employee Retirement Income Se-  
 13      curity Act of 1974 shall be considered an  
 14      amount contributed by the employer to or  
 15      under the plan. The Secretary may prescribe by  
 16      regulation additional charges and credits to a  
 17      multiemployer plan’s funding standard account  
 18      to the extent necessary to prevent withdrawal li-  
 19      ability payments from being unduly reflected as  
 20      advance funding for plan liabilities.

21          “(B)     ADJUSTMENTS WHEN A MULTIEM-  
 22      PLOYER PLAN LEAVES REORGANIZATION.—If a  
 23      multiemployer plan is not in reorganization in  
 24      the plan year but was in reorganization in the  
 25      immediately preceding plan year, any balance in

1 the funding standard account at the close of  
 2 such immediately preceding plan year—

3 “(i) shall be eliminated by an offset-  
 4 ting credit or charge (as the case may be),  
 5 but

6 “(ii) shall be taken into account in  
 7 subsequent plan years by being amortized  
 8 in equal annual installments (until fully  
 9 amortized) over 30 plan years.

10 The preceding sentence shall not apply to the  
 11 extent of any accumulated funding deficiency  
 12 under section 4243(a) of such Act as of the end  
 13 of the last plan year that the plan was in reor-  
 14 ganization.

15 “(C) PLAN PAYMENTS TO SUPPLEMENTAL  
 16 PROGRAM OR WITHDRAWAL LIABILITY PAYMENT  
 17 FUND.—Any amount paid by a plan during a  
 18 plan year to the Pension Benefit Guaranty Cor-  
 19 poration pursuant to section 4222 of such Act  
 20 or to a fund exempt under section 501(c)(22)  
 21 pursuant to section 4223 of such Act shall re-  
 22 duce the amount of contributions considered re-  
 23 ceived by the plan for the plan year.

24 “(D) INTERIM WITHDRAWAL LIABILITY  
 25 PAYMENTS.—Any amount paid by an employer

1 pending a final determination of the employer's  
 2 withdrawal liability under part 1 of subtitle E  
 3 of title IV of such Act and subsequently re-  
 4 funded to the employer by the plan shall be  
 5 charged to the funding standard account in ac-  
 6 cordance with regulations prescribed by the  
 7 Secretary.

8 “(E) ELECTION FOR DEFERRAL OF  
 9 CHARGE FOR PORTION OF NET EXPERIENCE  
 10 LOSS.—If an election is in effect under section  
 11 412(b)(7)(F) (as in effect on the day before the  
 12 date of the enactment of the Pension Security  
 13 and Transparency Act of 2005) for any plan  
 14 year, the funding standard account shall be  
 15 charged in the plan year to which the portion  
 16 of the net experience loss deferred by such elec-  
 17 tion was deferred with the amount so deferred  
 18 (and paragraph (2)(B)(ii) shall not apply to the  
 19 amount so charged).

20 “(F) FINANCIAL ASSISTANCE.—Any  
 21 amount of any financial assistance from the  
 22 Pension Benefit Guaranty Corporation to any  
 23 plan, and any repayment of such amount, shall  
 24 be taken into account under this section and

1           section 412 in such manner as is determined by  
2           the Secretary.

3           “(G) SHORT-TERM BENEFITS.—To the ex-  
4           tent that any plan amendment increases the un-  
5           funded past service liability under the plan by  
6           reason of an increase in benefits which are pay-  
7           able under the terms of the plan for a period  
8           that does not exceed 14 years from the effective  
9           date of the amendment, paragraph (2)(B)(i)  
10          shall be applied separately with respect to such  
11          increase in unfunded past service liability by  
12          substituting the number of years of the period  
13          during which such benefits are payable for ‘15’.

14          “(c) ADDITIONAL RULES.—

15               “(1) DETERMINATIONS TO BE MADE UNDER  
16               FUNDING METHOD.—For purposes of this part, nor-  
17               mal costs, accrued liability, past service liabilities,  
18               and experience gains and losses shall be determined  
19               under the funding method used to determine costs  
20               under the plan.

21               “(2) VALUATION OF ASSETS.—

22                       “(A) IN GENERAL.—For purposes of this  
23                       part, the value of the plan’s assets shall be de-  
24                       termined on the basis of any reasonable actu-  
25                       arial method of valuation which takes into ac-

1 count fair market value and which is permitted  
2 under regulations prescribed by the Secretary.

3 “(B) ELECTION WITH RESPECT TO  
4 BONDS.—The value of a bond or other evidence  
5 of indebtedness which is not in default as to  
6 principal or interest may, at the election of the  
7 plan administrator, be determined on an amor-  
8 tized basis running from initial cost at purchase  
9 to par value at maturity or earliest call date.  
10 Any election under this subparagraph shall be  
11 made at such time and in such manner as the  
12 Secretary shall by regulations provide, shall  
13 apply to all such evidences of indebtedness, and  
14 may be revoked only with the consent of the  
15 Secretary.

16 “(3) ACTUARIAL ASSUMPTIONS MUST BE REA-  
17 SONABLE.—For purposes of this section, all costs, li-  
18 abilities, rates of interest, and other factors under  
19 the plan shall be determined on the basis of actu-  
20 arial assumptions and methods—

21 “(A) each of which is reasonable (taking  
22 into account the experience of the plan and rea-  
23 sonable expectations), and

1           “(B) which, in combination, offer the actu-  
 2           ary’s best estimate of anticipated experience  
 3           under the plan.

4           “(4) TREATMENT OF CERTAIN CHANGES AS EX-  
 5           PERIENCE GAIN OR LOSS.—For purposes of this sec-  
 6           tion, if—

7           “(A) a change in benefits under the Social  
 8           Security Act or in other retirement benefits cre-  
 9           ated under Federal or State law, or

10          “(B) a change in the definition of the term  
 11          ‘wages’ under section 3121, or a change in the  
 12          amount of such wages taken into account under  
 13          regulations prescribed for purposes of section  
 14          401(a)(5),

15          results in an increase or decrease in accrued liability  
 16          under a plan, such increase or decrease shall be  
 17          treated as an experience loss or gain.

18          “(5) FULL FUNDING.—If, as of the close of a  
 19          plan year, a plan would (without regard to this para-  
 20          graph) have an accumulated funding deficiency in  
 21          excess of the full funding limitation—

22          “(A) the funding standard account shall be  
 23          credited with the amount of such excess, and

24          “(B) all amounts described in subpara-  
 25          graphs (B), (C), and (D) of subsection (b) (2)

and subparagraph (B) of subsection (b)(3) which are required to be amortized shall be considered fully amortized for purposes of such subparagraphs.

“(6) FULL-FUNDING LIMITATION.—

“(A) IN GENERAL.—For purposes of paragraph (5), the term ‘full-funding limitation’ means the excess (if any) of—

“(i) the accrued liability (including normal cost) under the plan (determined under the entry age normal funding method if such accrued liability cannot be directly calculated under the funding method used for the plan), over

“(ii) the lesser of—

“(I) the fair market value of the plan’s assets, or

“(II) the value of such assets determined under paragraph (2).

“(B) MINIMUM AMOUNT.—

“(i) IN GENERAL.—In no event shall the full-funding limitation determined under subparagraph (A) be less than the excess (if any) of—



1                   “(I) 90 percent of the current li-  
 2                   ability of the plan (including the ex-  
 3                   pected increase in current liability due  
 4                   to benefits accruing during the plan  
 5                   year), over

6                   “(II) the value of the plan’s as-  
 7                   sets determined under paragraph (2).

8                   “(ii) ASSETS.—For purposes of clause  
 9                   (i), assets shall not be reduced by any  
 10                  credit balance in the funding standard ac-  
 11                  count.

12                  “(C) FULL FUNDING LIMITATION.—For  
 13                  purposes of this paragraph, unless otherwise  
 14                  provided by the plan, the accrued liability under  
 15                  a multiemployer plan shall not include benefits  
 16                  which are not nonforfeitable under the plan  
 17                  after the termination of the plan (taking into  
 18                  consideration section 411(d)(3)).

19                  “(D) CURRENT LIABILITY.—For purposes  
 20                  of this paragraph—

21                   “(i) IN GENERAL.—The term ‘current  
 22                   liability’ means all liabilities to employees  
 23                   and their beneficiaries under the plan.

24                   “(ii) TREATMENT OF UNPREDICTABLE  
 25                   CONTINGENT EVENT BENEFITS.—For pur-

poses of clause (i), any benefit contingent  
on an event other than—

“(I) age, service, compensation,  
death, or disability, or

“(II) an event which is reason-  
ably and reliably predictable (as deter-  
mined by the Secretary),  
shall not be taken into account until the  
event on which the benefit is contingent oc-  
curs.

“(iii) INTEREST RATE USED.—The  
rate of interest used to determine current  
liability under this paragraph shall be the  
rate of interest determined under subpara-  
graph (E).

“(iv) MORTALITY TABLES.—

“(I) COMMISSIONERS’ STANDARD  
TABLE.—In the case of plan years be-  
ginning before the first plan year to  
which the first tables prescribed under  
subclause (II) apply, the mortality  
table used in determining current li-  
ability under this paragraph shall be  
the table prescribed by the Secretary  
which is based on the prevailing com-

missioners' standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on January 1, 1993.

“(II) SECRETARIAL AUTHORITY.—The Secretary may by regulation prescribe for plan years beginning after December 31, 1999, mortality tables to be used in determining current liability under this subsection. Such tables shall be based upon the actual experience of pension plans and projected trends in such experience. In prescribing such tables, the Secretary shall take into account results of available independent studies of mortality of individuals covered by pension plans.

“(v) SEPARATE MORTALITY TABLES FOR THE DISABLED.—Notwithstanding clause (iv)—

“(I) IN GENERAL.—The Secretary shall establish mortality tables which may be used (in lieu of the tables under clause (iv)) to determine

1 current liability under this subsection  
 2 for individuals who are entitled to  
 3 benefits under the plan on account of  
 4 disability. The Secretary shall estab-  
 5 lish separate tables for individuals  
 6 whose disabilities occur in plan years  
 7 beginning before January 1, 1995,  
 8 and for individuals whose disabilities  
 9 occur in plan years beginning on or  
 10 after such date.

11 “(II) SPECIAL RULE FOR DIS-  
 12 ABILITIES OCCURRING AFTER 1994.—  
 13 In the case of disabilities occurring in  
 14 plan years beginning after December  
 15 31, 1994, the tables under subclause  
 16 (I) shall apply only with respect to in-  
 17 dividuals described in such subclause  
 18 who are disabled within the meaning  
 19 of title II of the Social Security Act  
 20 and the regulations thereunder.

21 “(vi) PERIODIC REVIEW.—The Sec-  
 22 retary shall periodically (at least every 5  
 23 years) review any tables in effect under  
 24 this subparagraph and shall, to the extent  
 25 such Secretary determines necessary, by

1 regulation update the tables to reflect the  
 2 actual experience of pension plans and pro-  
 3 jected trends in such experience.

4 “(E) REQUIRED CHANGE OF INTEREST  
 5 RATE.—For purposes of determining a plan’s  
 6 current liability for purposes of this  
 7 paragraph—

8 “(i) IN GENERAL.—If any rate of in-  
 9 terest used under the plan under sub-  
 10 section (b)(6) to determine cost is not  
 11 within the permissible range, the plan shall  
 12 establish a new rate of interest within the  
 13 permissible range.

14 “(ii) PERMISSIBLE RANGE.—For pur-  
 15 poses of this subparagraph—

16 “(I) IN GENERAL.—Except as  
 17 provided in subclause (II), the term  
 18 ‘permissible range’ means a rate of in-  
 19 terest which is not more than 5 per-  
 20 cent above, and not more than 10 per-  
 21 cent below, the weighted average of  
 22 the rates of interest on 30-year Treas-  
 23 ury securities during the 4-year period  
 24 ending on the last day before the be-  
 25 ginning of the plan year.

1                   “(II) SECRETARIAL AUTHOR-  
 2                   ITY.—If the Secretary finds that the  
 3                   lowest rate of interest permissible  
 4                   under subclause (I) is unreasonably  
 5                   high, the Secretary may prescribe a  
 6                   lower rate of interest, except that  
 7                   such rate may not be less than 80  
 8                   percent of the average rate deter-  
 9                   mined under such subclause.

10                  “(iii) ASSUMPTIONS.—Notwith-  
 11                  standing paragraph (3)(A), the interest  
 12                  rate used under the plan shall be—

13                       “(I) determined without taking  
 14                       into account the experience of the  
 15                       plan and reasonable expectations, but

16                       “(II) consistent with the assump-  
 17                       tions which reflect the purchase rates  
 18                       which would be used by insurance  
 19                       companies to satisfy the liabilities  
 20                       under the plan.

21                  “(7) ANNUAL VALUATION.—

22                       “(A) IN GENERAL.—For purposes of this  
 23                       section, a determination of experience gains and  
 24                       losses and a valuation of the plan’s liability  
 25                       shall be made not less frequently than once

every year, except that such determination shall be made more frequently to the extent required in particular cases under regulations prescribed by the Secretary.

“(B) VALUATION DATE.—

“(i) CURRENT YEAR.—Except as provided in clause (ii), the valuation referred to in subparagraph (A) shall be made as of a date within the plan year to which the valuation refers or within one month prior to the beginning of such year.

“(ii) USE OF PRIOR YEAR VALUATION.—The valuation referred to in subparagraph (A) may be made as of a date within the plan year prior to the year to which the valuation refers if, as of such date, the value of the assets of the plan are not less than 100 percent of the plan’s current liability (as defined in paragraph (6)(D) without regard to clause (iv) thereof).

“(iii) ADJUSTMENTS.—Information under clause (ii) shall, in accordance with regulations, be actuarially adjusted to reflect significant differences in participants.

1                   “(iv) LIMITATION.—A change in fund-  
 2                   ing method to use a prior year valuation,  
 3                   as provided in clause (ii), may not be made  
 4                   unless as of the valuation date within the  
 5                   prior plan year, the value of the assets of  
 6                   the plan are not less than 125 percent of  
 7                   the plan’s current liability (as defined in  
 8                   paragraph (6)(D) without regard to clause  
 9                   (iv) thereof).

10                  “(8) TIME WHEN CERTAIN CONTRIBUTIONS  
 11                  DEEMED MADE.—For purposes of this section, any  
 12                  contributions for a plan year made by an employer  
 13                  after the last day of such plan year, but not later  
 14                  than two and one-half months after such day, shall  
 15                  be deemed to have been made on such last day. For  
 16                  purposes of this subparagraph, such two and one-  
 17                  half month period may be extended for not more  
 18                  than six months under regulations prescribed by the  
 19                  Secretary.

20                  “(d) EXTENSION OF AMORTIZATION PERIODS FOR  
 21                  MULTIEMPLOYER PLANS.—

22                         “(1) AUTOMATIC EXTENSION UPON APPLICA-  
 23                         TION BY CERTAIN PLANS.—

24                                 “(A) IN GENERAL.—If the plan sponsor of  
 25                                 a multiemployer plan—



1 “(i) submits to the Secretary an appli-  
 2 cation for an extension of the period of  
 3 years required to amortize any unfunded  
 4 liability described in any clause of sub-  
 5 section (b)(2)(B) or described in subsection  
 6 (b)(4), and

7 “(ii) includes with the application a  
 8 certification by the plan’s actuary de-  
 9 scribed in subparagraph (B),  
 10 the Secretary shall extend the amortization pe-  
 11 riod for the period of time (not in excess of 5  
 12 years) specified in the application. Such exten-  
 13 sion shall be in addition to any extension under  
 14 paragraph (2).

15 “(B) CRITERIA.—A certification with re-  
 16 spect to a multiemployer plan is described in  
 17 this subparagraph if the plan’s actuary certifies  
 18 that, based on reasonable assumptions—

19 “(i) absent the extension under sub-  
 20 paragraph (A), the plan would have an ac-  
 21 cumulated funding deficiency in the cur-  
 22 rent plan year or any of the 9 succeeding  
 23 plan years,

24 “(ii) the plan sponsor has adopted a  
 25 plan to improve the plan’s funding status,

1 “(iii) the plan is projected to have suf-  
2 ficient assets to timely pay expected bene-  
3 fits and anticipated expenditures over the  
4 amortization period as extended, and

5 “(iv) the notice required under para-  
6 graph (3)(A) has been provided.

7 “(2) ADDITIONAL EXTENSION.—

8 “(A) IN GENERAL.—If the plan sponsor of  
9 a multiemployer plan submits to the Secretary  
10 an application for an extension of the period of  
11 years required to amortize any unfunded liabil-  
12 ity described in any clause of subsection  
13 (b)(2)(B) or described in subsection (b)(4), the  
14 Secretary may extend the amortization period  
15 for a period of time (not in excess of 5 years)  
16 if the Secretary of the Treasury makes the de-  
17 termination described in subparagraph (B).  
18 Such extension shall be in addition to any ex-  
19 tension under paragraph (1).

20 “(B) DETERMINATION.—The Secretary  
21 may grant an extension under subparagraph  
22 (A) if the Secretary determines that—

23 “(i) such extension would carry out  
24 the purposes of this Act and would provide

adequate protection for participants under  
the plan and their beneficiaries, and

“(ii) the failure to permit such extension would—

“(I) result in a substantial risk  
to the voluntary continuation of the  
plan, or a substantial curtailment of  
pension benefit levels or employee  
compensation, and

“(II) be adverse to the interests  
of plan participants in the aggregate.

“(C) ACTION BY SECRETARY.—The Secretary shall act upon any application for an extension under this paragraph within 180 days of the submission of such application. If the Secretary rejects the application for an extension under this paragraph, the Secretary shall provide notice to the plan detailing the specific reasons for the rejection, including references to the criteria set forth above.

“(3) ADVANCE NOTICE.—

“(A) IN GENERAL.—The Secretary shall, before granting an extension under this subsection, require each applicant to provide evidence satisfactory to such Secretary that the

1 applicant has provided notice of the filing of the  
 2 application for such extension to each affected  
 3 party (as defined in section 4001(a)(21) of the  
 4 Employee Retirement Income Security Act of  
 5 1974) with respect to the affected plan. Such  
 6 notice shall include a description of the extent  
 7 to which the plan is funded for benefits which  
 8 are guaranteed under title IV of such Act and  
 9 for benefit liabilities.

10 “(B) CONSIDERATION OF RELEVANT IN-  
 11 FORMATION.—The Secretary shall consider any  
 12 relevant information provided by a person to  
 13 whom notice was given under paragraph (1).”.

14 (b) EFFECTIVE DATE.—

15 (1) IN GENERAL.—The amendments made by  
 16 this section shall apply to plan years beginning after  
 17 2006.

18 (2) SPECIAL RULE FOR CERTAIN AMORTIZATION  
 19 EXTENSIONS.—If the Secretary of the Treasury  
 20 grants an extension under section 304 of the Em-  
 21 ployee Retirement Income Security Act of 1974 and  
 22 section 412(e) of the Internal Revenue Code of 1986  
 23 with respect to any application filed with the Sec-  
 24 retary of the Treasury on or before June 30, 2005,  
 25 the extension (and any modification thereof) shall be

1 applied and administered under the rules of such  
 2 sections as in effect before the enactment of this  
 3 Act, including the use of the rate of interest deter-  
 4 mined under section 6621(b) of such Code.

5 **SEC. 212. ADDITIONAL FUNDING RULES FOR MULTIEM-**  
 6 **PLOYER PLANS IN ENDANGERED OR CRIT-**  
 7 **ICAL STATUS.**

8 (a) IN GENERAL.—Subpart A of part III of sub-  
 9 chapter D of chapter 1 of the Internal Revenue Code of  
 10 1986 (as amended by this Act) is amended by inserting  
 11 after section 431 the following new section:

12 **“SEC. 432. ADDITIONAL FUNDING RULES FOR MULTIEM-**  
 13 **PLOYER PLANS IN ENDANGERED STATUS OR**  
 14 **CRITICAL STATUS.**

15 “(a) GENERAL RULE.—For purposes of this part, in  
 16 the case of a multiemployer plan—

17 “(1) if the plan is in endangered status—

18 “(A) the plan sponsor shall adopt and im-  
 19 plement a funding improvement plan in accord-  
 20 ance with the requirements of subsection (c),  
 21 and

22 “(B) the requirements of subsection (d)  
 23 shall apply during the funding plan adoption  
 24 period and the funding improvement period,  
 25 and

1 “(2) if the plan is in critical status—

2 “(A) the plan sponsor shall adopt and im-  
3 plement a rehabilitation plan in accordance with  
4 the requirements of subsection (e), and

5 “(B) the requirements of subsection (f)  
6 shall apply during the rehabilitation plan adop-  
7 tion period and the rehabilitation period.

8 “(b) DETERMINATION OF ENDANGERED AND CRIT-  
9 ICAL STATUS.—For purposes of this section—

10 “(1) ENDANGERED STATUS.—A multiemployer  
11 plan is in endangered status for a plan year if, as  
12 determined by the plan actuary under paragraph  
13 (3), the plan is not in critical status for the plan  
14 year and either—

15 “(A) the plan’s funded percentage for such  
16 plan year is less than 80 percent, or

17 “(B) the plan has an accumulated funding  
18 deficiency for such plan year, or is projected to  
19 have such an accumulated funding deficiency  
20 for any of the 6 succeeding plan years, taking  
21 into account any extension of amortization peri-  
22 ods under section 431(d).

23 For purposes of this section, a plan described in  
24 subparagraph (B) shall be treated as in seriously en-  
25 dangered status.

1           “(2) CRITICAL STATUS.—A multiemployer plan  
2           is in critical status for a plan year if, as determined  
3           by the plan actuary under paragraph (3), the plan  
4           is described in 1 or more of the following subpara-  
5           graphs as of the beginning of the plan year:

6                   “(A) A plan is described in this subpara-  
7                   graph if—

8                           “(i) the funded percentage of the plan  
9                           is less than 65 percent, and

10                           “(ii) the sum of—

11                                   “(I) the market value of plan as-  
12                                   sets, plus

13                                   “(II) the present value of the  
14                                   reasonably anticipated employer con-  
15                                   tributions for the current plan year  
16                                   and each of the 5 succeeding plan  
17                                   years, assuming that the terms of all  
18                                   collective bargaining agreements pur-  
19                                   suant to which the plan is maintained  
20                                   for the current plan year continue in  
21                                   effect for succeeding plan years,

22                           is less than the present value of all benefits  
23                           projected to be payable under the plan dur-  
24                           ing the current plan year and each of the

1           5 succeeding plan years (plus administra-  
2           tive expenses for such plan years).

3           “(B) A plan is described in this subpara-  
4           graph if—

5                 “(i) the plan has an accumulated  
6                 funding deficiency for the current plan  
7                 year, not taking into account any extension  
8                 of amortization periods under section  
9                 431(d), or

10                “(ii) the plan is projected to have an  
11                accumulated funding deficiency for any of  
12                the 3 succeeding plan years (4 succeeding  
13                plan years if the funded percentage of the  
14                plan is 65 percent or less), not taking into  
15                account any extension of amortization peri-  
16                ods under section 431(d).

17           “(C) A plan is described in this subpara-  
18           graph if—

19                 “(i)(I) the plan’s normal cost for the  
20                 current plan year, plus interest (deter-  
21                 mined at the rate used for determining  
22                 costs under the plan) for the current plan  
23                 year on the amount of unfunded benefit li-  
24                 abilities under the plan as of the last date  
25                 of the preceding plan year, exceeds



1           “(II) the present value of the reason-  
2           ably anticipated employer contributions for  
3           the current plan year,

4           “(ii) the present value of nonforfeit-  
5           able benefits of inactive participants is  
6           greater than the present value of non-  
7           forfeitable benefits of active participants,  
8           and

9           “(iii) the plan has an accumulated  
10          funding deficiency for the current plan  
11          year, or is projected to have such a defi-  
12          ciency for any of the 4 succeeding plan  
13          years, not taking into account any exten-  
14          sion of amortization periods under section  
15          431(d).

16          “(D) A plan is described in this subpara-  
17          graph if the sum of—

18               “(i) the market value of plan assets,  
19               plus

20               “(ii) the present value of the reason-  
21               ably anticipated employer contributions for  
22               the current plan year and each of the 4  
23               succeeding plan years, assuming that the  
24               terms of all collective bargaining agree-  
25               ments pursuant to which the plan is main-

1           tained for the current plan year continue  
 2           in effect for succeeding plan years,  
 3           is less than the present value of all benefits pro-  
 4           jected to be payable under the plan during the  
 5           current plan year and each of the 4 succeeding  
 6           plan years (plus administrative expenses for  
 7           such plan years).

8           “(3) ANNUAL CERTIFICATION BY PLAN ACTU-  
 9           ARY.—

10           “(A) IN GENERAL.—During the 90-day pe-  
 11           riod beginning on the first day of each plan  
 12           year of a multiemployer plan, the plan actuary  
 13           shall certify to the Secretary—

14           “(i) whether or not the plan is in en-  
 15           dangered status for such plan year and  
 16           whether or not the plan is in critical status  
 17           for such plan year, and

18           “(ii) in the case of a plan which is in  
 19           a funding improvement or rehabilitation  
 20           period, whether or not the plan is making  
 21           the scheduled progress in meeting the re-  
 22           quirements of its funding improvement or  
 23           rehabilitation plan.

24           “(B) ACTUARIAL PROJECTIONS OF ASSETS  
 25           AND LIABILITIES.—

1           “(i) IN GENERAL.—In making the de-  
 2 terminations and projections under this  
 3 subsection, the plan actuary shall make  
 4 projections required for the current and  
 5 succeeding plan years, using reasonable ac-  
 6 tuarial estimates, assumptions, and meth-  
 7 ods, of the current value of the assets of  
 8 the plan and the present value of all liabil-  
 9 ities to participants and beneficiaries under  
 10 the plan for the current plan year as of the  
 11 beginning of such year. The projected  
 12 present value of liabilities as of the begin-  
 13 ning of such year shall be determined  
 14 based on the actuarial statement required  
 15 under section 103(d) of the Employee Re-  
 16 tirement Income Security Act of 1974 with  
 17 respect to the most recently filed annual  
 18 report or the actuarial valuation for the  
 19 preceding plan year.

20           “(ii) DETERMINATIONS OF FUTURE  
 21 CONTRIBUTIONS.—Any actuarial projection  
 22 of plan assets shall assume—

23                   “(I) reasonably anticipated em-  
 24 ployer contributions for the current  
 25 and succeeding plan years, assuming

1                   that the terms of the one or more col-  
 2                   lective bargaining agreements pursu-  
 3                   ant to which the plan is maintained  
 4                   for the current plan year continue in  
 5                   effect for succeeding plan years, or

6                   “(II) that employer contributions  
 7                   for the most recent plan year will con-  
 8                   tinue indefinitely, but only if the plan  
 9                   actuary determines there have been no  
 10                  significant demographic changes that  
 11                  would make such assumption unrea-  
 12                  sonable.

13                  “(C) PENALTY FOR FAILURE TO SECURE  
 14                  TIMELY ACTUARIAL CERTIFICATION.—Any fail-  
 15                  ure of the plan’s actuary to certify the plan’s  
 16                  status under this subsection by the date speci-  
 17                  fied in subparagraph (A) shall be treated for  
 18                  purposes of section 502(c)(2) of such Act as a  
 19                  failure or refusal by the plan administrator to  
 20                  file the annual report required to be filed with  
 21                  the Secretary under section 101(b)(4) of such  
 22                  Act.

23                  “(D) NOTICE.—In any case in which a  
 24                  multiemployer plan is certified to be in endan-  
 25                  gered or critical status under subparagraph (A),

1           the plan sponsor shall, not later than 30 days  
 2           after the date of the certification, provide notifi-  
 3           cation of the endangered or critical status to  
 4           the participants and beneficiaries, the bar-  
 5           gaining parties, the Pension Benefit Guaranty  
 6           Corporation, the Secretary, and the Secretary  
 7           of Labor.

8           “(c) FUNDING IMPROVEMENT PLAN MUST BE  
 9 ADOPTED FOR MULTIEMPLOYER PLANS IN ENDANGERED  
 10 STATUS.—

11           “(1) IN GENERAL.—In any case in which a  
 12           multiemployer plan is in endangered status for a  
 13           plan year, the plan sponsor, in accordance with this  
 14           subsection—

15           “(A) shall adopt a funding improvement  
 16           plan not later than 240 days following the re-  
 17           quired date for the actuarial certification of en-  
 18           dangered status under subsection (b)(3)(A),  
 19           and

20           “(B) within 30 days after the adoption of  
 21           the funding improvement plan—

22           “(i) in the case of a plan in seriously  
 23           endangered status, shall provide to the  
 24           bargaining parties 1 or more schedules  
 25           showing revised benefit structures, revised

1 contribution structures, or both, which, if  
2 adopted, may reasonably be expected to en-  
3 able the multiemployer plan to meet the  
4 applicable requirements under paragraph  
5 (3) in accordance with the funding im-  
6 provement plan, including a description of  
7 the reductions in future benefit accruals  
8 and increases in contributions that the  
9 plan sponsor determines are reasonably  
10 necessary to meet the applicable require-  
11 ments if the plan sponsor assumes that  
12 there are no increases in contributions  
13 under the plan other than the increases  
14 necessary to meet the applicable require-  
15 ments after future benefit accruals have  
16 been reduced to the maximum extent per-  
17 mitted by law, and

18 “(ii) may, if the plan sponsor deems  
19 appropriate, prepare and provide the bar-  
20 gaining parties with additional information  
21 relating to contribution rates or benefit re-  
22 ductions, alternative schedules, or other in-  
23 formation relevant to achieving the re-  
24 quirements under paragraph (3) in accord-  
25 ance with the funding improvement plan.

1           “(2) EXCEPTION FOR YEARS AFTER PROCESS  
 2           BEGINS.—Paragraph (1) shall not apply to a plan  
 3           year if such year is in a funding plan adoption pe-  
 4           riod or funding improvement period by reason of the  
 5           plan being in endangered status for a preceding plan  
 6           year. For purposes of this section, such preceding  
 7           plan year shall be the initial determination year with  
 8           respect to the funding improvement plan to which it  
 9           relates.

10           “(3) FUNDING IMPROVEMENT PLAN.—For pur-  
 11           poses of this section—

12           “(A) IN GENERAL.—A funding improve-  
 13           ment plan is a plan which consists of the ac-  
 14           tions, including options or a range of options to  
 15           be proposed to the bargaining parties, which,  
 16           under reasonable actuarial assumptions, will re-  
 17           sult in the plan meeting the requirements of  
 18           this paragraph.

19           “(B) PLANS OTHER THAN SERIOUSLY EN-  
 20           DANGERED PLANS.—In the case of plan not in  
 21           seriously endangered status, the requirements  
 22           of this paragraph are met if the plan’s funded  
 23           percentage as of the close of the funding im-  
 24           provement period exceeds the lesser of 80 per-  
 25           cent or a percentage equal to the sum of—

1 “(i) such percentage as of the begin-  
 2 ning of such period, plus

3 “(ii) 10 percent of the percentage de-  
 4 termined under clause (i).

5 “(C) SERIOUSLY ENDANGERED PLANS.—

6 In the case of a plan in seriously endangered  
 7 status, the requirements of this paragraph are  
 8 met if—

9 “(i) the plan’s funded percentage as  
 10 of the close of the funding improvement  
 11 period equals or exceeds the percentage  
 12 which is equal to the sum of—

13 “(I) such percentage as of the  
 14 beginning of such period, plus

15 “(II) 33 percent of the difference  
 16 between 100 percent and the percent-  
 17 age under subclause (I), and

18 “(ii) there is no accumulated funding  
 19 deficiency for any plan year during the  
 20 funding improvement period (taking into  
 21 account any extension of amortization peri-  
 22 ods under section 431(d)).

23 “(4) FUNDING IMPROVEMENT PERIOD.—For  
 24 purposes of this section—



1           “(A) IN GENERAL.—The funding improve-  
 2           ment period for any funding improvement plan  
 3           adopted pursuant to this subsection is the 10-  
 4           year period beginning on the first day of the  
 5           first plan year of the multiemployer plan begin-  
 6           ning after the earlier of—

7                   “(i) the second anniversary of the  
 8                   date of the adoption of the funding im-  
 9                   provement plan, or

10                   “(ii) the expiration of the collective  
 11                   bargaining agreements in effect on the due  
 12                   date for the actuarial certification of en-  
 13                   dangered status for the initial determina-  
 14                   tion year under subsection (b)(3)(A) and  
 15                   covering, as of such due date, at least 75  
 16                   percent of the active participants in such  
 17                   multiemployer plan.

18           “(B) COORDINATION WITH CHANGES IN  
 19           STATUS.—

20                   “(i) PLANS NO LONGER IN ENDAN-  
 21                   GERED STATUS.—If the plan’s actuary cer-  
 22                   tifies under subsection (b)(3)(A) for a plan  
 23                   year in any funding plan adoption period  
 24                   or funding improvement period that the  
 25                   plan is no longer in endangered status and

1 is not in critical status, the funding plan  
 2 adoption period or funding improvement  
 3 period, whichever is applicable, shall end as  
 4 of the close of the preceding plan year.

5 “(ii) PLANS IN CRITICAL STATUS.—If  
 6 the plan’s actuary certifies under sub-  
 7 section (b)(3)(A) for a plan year in any  
 8 funding plan adoption period or funding  
 9 improvement period that the plan is in  
 10 critical status, the funding plan adoption  
 11 period or funding improvement period,  
 12 whichever is applicable, shall end as of the  
 13 close of the plan year preceding the first  
 14 plan year in the rehabilitation period with  
 15 respect to such status.

16 “(5) SPECIAL RULES FOR CERTAIN UNDER-  
 17 FUNDED PLANS.—

18 “(A) IN GENERAL.—Except as provided in  
 19 subparagraph (B), if the funded percentage of  
 20 a plan in seriously endangered status was 70  
 21 percent or less as of the beginning of the initial  
 22 determination year, the following rules shall  
 23 apply in determining whether the requirements  
 24 of paragraph (3)(C)(i) are met:

1 “(i) The plan’s funded percentage as  
 2 of the close of the funding improvement  
 3 period must equal or exceed a percentage  
 4 which is equal to the sum of—

5 “(I) such percentage as of the  
 6 beginning of such period, plus

7 “(II) 20 percent of the difference  
 8 between 100 percent and the percent-  
 9 age under subclause (I).

10 “(ii) The funding improvement period  
 11 under paragraph (4)(A) shall be 15 years  
 12 rather than 10 years.

13 “(B) SPECIAL RULES FOR PLANS WITH  
 14 FUNDED PERCENTAGE OVER 70 PERCENT.—If  
 15 the funded percentage described in subpara-  
 16 graph (A) was more than 70 percent but less  
 17 than 80 percent as of the beginning of the ini-  
 18 tial determination year—

19 “(i) subparagraph (A) shall apply if  
 20 the plan’s actuary certifies, within 30 days  
 21 after the certification under subsection  
 22 (b)(3)(A) for the initial determination  
 23 year, that, based on the terms of the plan  
 24 and the collective bargaining agreements in  
 25 effect at the time of such certification, the

1 plan is not projected to meet the require-  
 2 ments of paragraph (3)(C)(i) without re-  
 3 gard to this paragraph, and

4 “(ii) if there is a certification under  
 5 clause (i), the plan may, in formulating its  
 6 funding improvement plan, only take into  
 7 account the rules of subparagraph (A) for  
 8 plan years in the funding improvement pe-  
 9 riod beginning on or before the date on  
 10 which the last of the collective bargaining  
 11 agreements described in paragraph  
 12 (4)(A)(ii) expires.

13 Notwithstanding clause (ii), if for any plan year  
 14 ending after the date described in clause (ii) the  
 15 plan actuary certifies (at the time of the annual  
 16 certification under subsection (b)(3)(A) for such  
 17 plan year) that, based on the terms of the plan  
 18 and collective bargaining agreements in effect  
 19 at the time of that annual certification, the plan  
 20 is not projected to be able to meet the require-  
 21 ments of paragraph (3)(C)(i) without regard to  
 22 this paragraph, the plan may continue to as-  
 23 sume for such year that the funding improve-  
 24 ment period is 15 years rather than 10 years.

1           “(6) UPDATES TO FUNDING IMPROVEMENT  
2           PLAN AND SCHEDULES.—

3           “(A) FUNDING IMPROVEMENT PLAN.—The  
4           plan sponsor shall annually update the funding  
5           improvement plan and shall file the update with  
6           the plan’s annual report under section 104 of  
7           the Employee Retirement Income Security Act  
8           of 1974.

9           “(B) SCHEDULES.—The plan sponsor may  
10          periodically update any schedule of contribution  
11          rates provided under this subsection to reflect  
12          the experience of the plan, except that the  
13          schedule or schedules described in paragraph  
14          (1)(B)(i) shall be updated at least once every 3  
15          years.

16          “(C) DURATION OF SCHEDULE.—A sched-  
17          ule of contribution rates provided by the plan  
18          sponsor and relied upon by bargaining parties  
19          in negotiating a collective bargaining agreement  
20          shall remain in effect for the duration of that  
21          collective bargaining agreement.

22          “(7) PENALTY IF NO FUNDING IMPROVEMENT  
23          PLAN ADOPTED.—A failure of the plan sponsor to  
24          adopt a funding improvement plan by the date speci-  
25          fied in paragraph (1)(A) shall be treated for pur-

poses of section 502(c)(2) of such Act as a failure or refusal by the plan administrator to file the annual report required to be filed with the Secretary of Labor under section 101(b)(4) of such Act.

“(8) FUNDING PLAN ADOPTION PERIOD.—For purposes of this section, the term ‘funding plan adoption period’ means the period beginning on the date of the certification under subsection (b)(3)(A) for the initial determination year and ending on the day before the first day of the funding improvement period.

“(d) RULES FOR OPERATION OF PLAN DURING ADOPTION AND IMPROVEMENT PERIODS; FAILURE TO MEET REQUIREMENTS.—

“(1) SPECIAL RULES FOR PLAN ADOPTION PERIOD.—During the plan adoption period—

“(A) the plan sponsor may not accept a collective bargaining agreement or participation agreement with respect to the multiemployer plan that provides for—

“(i) a reduction in the level of contributions for any participants,

“(ii) a suspension of contributions with respect to any period of service, or

1 “(iii) any new direct or indirect exclu-  
2 sion of younger or newly hired employees  
3 from plan participation,

4 “(B) no amendment of the plan which in-  
5 creases the liabilities of the plan by reason of  
6 any increase in benefits, any change in the ac-  
7 crual of benefits, or any change in the rate at  
8 which benefits become nonforfeitable under the  
9 plan may be adopted unless the amendment is  
10 required as a condition of qualification under  
11 part I of subchapter D of chapter 1 or to com-  
12 ply with other applicable law, and

13 “(C) in the case of a plan in seriously en-  
14 dangered status, the plan sponsor shall take all  
15 reasonable actions which are consistent with the  
16 terms of the plan and applicable law and which  
17 are expected, based on reasonable assumptions,  
18 to achieve—

19 “(i) an increase in the plan’s funded  
20 percentage, and

21 “(ii) postponement of an accumulated  
22 funding deficiency for at least 1 additional  
23 plan year.

24 Actions under subparagraph (C) include applications  
25 for extensions of amortization periods under section

1        431(d), use of the shortfall funding method in mak-  
 2        ing funding standard account computations, amend-  
 3        ments to the plan’s benefit structure, reductions in  
 4        future benefit accruals, and other reasonable actions  
 5        consistent with the terms of the plan and applicable  
 6        law.

7                “(2) COMPLIANCE WITH FUNDING IMPROVE-  
 8        MENT PLAN.—

9                “(A) IN GENERAL.—A plan may not be  
 10        amended after the date of the adoption of a  
 11        funding improvement plan under subsection (c)  
 12        so as to be inconsistent with the funding im-  
 13        provement plan.

14               “(B) NO REDUCTION IN CONTRIBU-  
 15        TIONS.—A plan sponsor may not during any  
 16        funding improvement period accept a collective  
 17        bargaining agreement or participation agree-  
 18        ment with respect to the multiemployer plan  
 19        that provides for—

20               “(i) a reduction in the level of con-  
 21        tributions for any participants,

22               “(ii) a suspension of contributions  
 23        with respect to any period of service, or



1 “(iii) any new direct or indirect exclu-  
2 sion of younger or newly hired employees  
3 from plan participation.

4 “(C) SPECIAL RULES FOR BENEFIT IN-  
5 CREASES.—A plan may not be amended after  
6 the date of the adoption of a funding improve-  
7 ment plan under subsection (c) so as to in-  
8 crease benefits, including future benefit accru-  
9 als, unless—

10 “(i) in the case of a plan in seriously  
11 endangered status, the plan actuary cer-  
12 tifies that, after taking into account the  
13 benefit increase, the plan is still reasonably  
14 expected to meet the requirements under  
15 subsection (c)(3) in accordance with the  
16 schedule contemplated in the funding im-  
17 provement plan, and

18 “(ii) in the case of a plan not in seri-  
19 ously endangered status, the actuary cer-  
20 tifies that such increase is paid for out of  
21 contributions not required by the funding  
22 improvement plan to meet the require-  
23 ments under subsection (c)(3) in accord-  
24 ance with the schedule contemplated in the  
25 funding improvement plan.

1 “(3) FAILURE TO MEET REQUIREMENTS.—

2 “(A) IN GENERAL.—Notwithstanding sec-  
 3 tion 4971(g), if a plan fails to meet the require-  
 4 ments of subsection (c)(3) by the end of the  
 5 funding improvement period, the plan shall be  
 6 treated as having an accumulated funding defi-  
 7 ciency for purposes of section 4971 for the last  
 8 plan year in such period (and each succeeding  
 9 plan year until such requirements are met) in  
 10 an amount equal to the greater of the amount  
 11 of the contributions necessary to meet such re-  
 12 quirements or the amount of such accumulated  
 13 funding deficiency without regard to this para-  
 14 graph.

15 “(B) WAIVER.—In the case of a failure de-  
 16 scribed in subparagraph (A) which is due to  
 17 reasonable cause and not to willful neglect, the  
 18 Secretary of the Treasury may waive part or all  
 19 of the tax imposed by section 4971 of such  
 20 Code to the extent that the payment of such tax  
 21 would be excessive or otherwise inequitable rel-  
 22 ative to the failure involved.

23 “(e) REHABILITATION PLAN MUST BE ADOPTED  
 24 FOR MULTIEMPLOYER PLANS IN CRITICAL STATUS.—

1           “(1) IN GENERAL.—In any case in which a  
2           multiemployer plan is in critical status for a plan  
3           year, the plan sponsor, in accordance with this  
4           subsection—

5                   “(A) shall adopt a rehabilitation plan not  
6                   later than 240 days following the required date  
7                   for the actuarial certification of critical status  
8                   under subsection (b)(3)(A), and

9                   “(B) within 30 days after the adoption of  
10                  the rehabilitation plan—

11                           “(i) shall provide to the bargaining  
12                           parties 1 or more schedules showing re-  
13                           vised benefit structures, revised contribu-  
14                           tion structures, or both, which, if adopted,  
15                           may reasonably be expected to enable the  
16                           multiemployer plan to emerge from critical  
17                           status in accordance with the rehabilitation  
18                           plan, and

19                           “(ii) may, if the plan sponsor deems  
20                           appropriate, prepare and provide the bar-  
21                           gaining parties with additional information  
22                           relating to contribution rates or benefit re-  
23                           ductions, alternative schedules, or other in-  
24                           formation relevant to emerging from crit-

1                   ical status in accordance with the rehabili-  
2                   tation plan.

3       The schedule or schedules described in subparagraph  
4       (B)(i) shall reflect reductions in future benefit ac-  
5       cruals and increases in contributions that the plan  
6       sponsor determines are reasonably necessary to  
7       emerge from critical status. One schedule shall be  
8       designated as the default schedule and such schedule  
9       shall assume that there are no increases in contribu-  
10      tions under the plan other than the increases nec-  
11      essary to emerge from critical status after future  
12      benefit accruals and other benefits (other than bene-  
13      fits the reduction or elimination of which are not  
14      permitted under section 411(d)(6)) have been re-  
15      duced to the maximum extent permitted by law.

16           “(2) EXCEPTION FOR YEARS AFTER PROCESS  
17      BEGINS.—Paragraph (1) shall not apply to a plan  
18      year if such year is in a rehabilitation plan adoption  
19      period or rehabilitation period by reason of the plan  
20      being in critical status for a preceding plan year.  
21      For purposes of this section, such preceding plan  
22      year shall be the initial critical year with respect to  
23      the rehabilitation plan to which it relates.

24           “(3) REHABILITATION PLAN.—For purposes of  
25      this section—

1           “(A) IN GENERAL.—A rehabilitation plan  
2           is a plan which consists of—

3                   “(i) actions which will enable, under  
4                   reasonable actuarial assumptions, the plan  
5                   to cease to be in critical status by the end  
6                   of the rehabilitation period and may in-  
7                   clude reductions in plan expenditures (in-  
8                   cluding plan mergers and consolidations),  
9                   reductions in future benefit accruals or in-  
10                  creases in contributions, if agreed to by the  
11                  bargaining parties, or any combination of  
12                  such actions, or

13                  “(ii) if the plan sponsor determines  
14                  that, based on reasonable actuarial as-  
15                  sumptions and upon exhaustion of all rea-  
16                  sonable measures, the plan can not reason-  
17                  ably be expected to emerge from critical  
18                  status by the end of the rehabilitation pe-  
19                  riod, reasonable measures to emerge from  
20                  critical status at a later time or to forestall  
21                  possible insolvency (within the meaning of  
22                  section 4245 of the Employee Retirement  
23                  Income Security Act of 1974).

24           Such plan shall include the schedules required  
25           to be provided under paragraph (1)(B)(i). If

1 clause (ii) applies, such plan shall set forth the  
 2 alternatives considered, explain why the plan is  
 3 not reasonably expected to emerge from critical  
 4 status by the end of the rehabilitation period,  
 5 and specify when, if ever, the plan is expected  
 6 to emerge from critical status in accordance  
 7 with the rehabilitation plan.

8 “(B) UPDATES TO REHABILITATION PLAN  
 9 AND SCHEDULES.—

10 “(i) REHABILITATION PLAN.—The  
 11 plan sponsor shall annually update the re-  
 12 habilitation plan and shall file the update  
 13 with the plan’s annual report under section  
 14 104 of the Employee Retirement Income  
 15 Security Act of 1974.

16 “(ii) SCHEDULES.—The plan sponsor  
 17 may periodically update any schedule of  
 18 contribution rates provided under this sub-  
 19 section to reflect the experience of the  
 20 plan, except that the schedule or schedules  
 21 described in paragraph (1)(B)(i) shall be  
 22 updated at least once every 3 years.

23 “(iii) DURATION OF SCHEDULE.—A  
 24 schedule of contribution rates provided by  
 25 the plan sponsor and relied upon by bar-

1           gaining parties in negotiating a collective  
2           bargaining agreement shall remain in ef-  
3           fect for the duration of that collective bar-  
4           gaining agreement.

5           “(C) DEFAULT SCHEDULE.—If the collec-  
6           tive bargaining agreement providing for con-  
7           tributions under a multiemployer plan that was  
8           in effect at the time the plan entered critical  
9           status expires and, after receiving a schedule  
10          from the plan sponsor under paragraph  
11          (1)(B)(i), the bargaining parties have not  
12          adopted a collective bargaining agreement with  
13          terms consistent with such a schedule, the de-  
14          fault schedule described in the last sentence of  
15          paragraph (1) shall go into effect with respect  
16          to those bargaining parties.

17          “(4) REHABILITATION PERIOD.—For purposes  
18          of this section—

19               “(A) IN GENERAL.—The rehabilitation pe-  
20               riod for a plan in critical status is the 10-year  
21               period beginning on the first day of the first  
22               plan year of the multiemployer plan following  
23               the earlier of—

1 “(i) the second anniversary of the  
2 date of the adoption of the rehabilitation  
3 plan, or

4 “(ii) the expiration of the collective  
5 bargaining agreements in effect on the  
6 date of the due date for the actuarial cer-  
7 tification of critical status for the initial  
8 critical year under subsection (a)(1) and  
9 covering, as of such date at least 75 per-  
10 cent of the active participants in such mul-  
11 tiemployer plan.

12 If a plan emerges from critical status as pro-  
13 vided under subparagraph (B) before the end of  
14 such 10-year period, the rehabilitation period  
15 shall end with the plan year preceding the plan  
16 year for which the determination under sub-  
17 paragraph (B) is made.

18 “(B) EMERGENCE.—A plan in critical sta-  
19 tus shall remain in such status until a plan  
20 year for which the plan actuary certifies, in ac-  
21 cordance with subsection (b)(3)(A), that the  
22 plan is not projected to have an accumulated  
23 funding deficiency for the plan year or any of  
24 the 9 succeeding plan years, without regard to



1           use of the shortfall method or any extension of  
2           amortization periods under section 431(d).

3           “(5) PENALTY IF NO REHABILITATION PLAN  
4           ADOPTED.—A failure of a plan sponsor to adopt a  
5           rehabilitation plan by the date specified in para-  
6           graph (1)(A) shall be treated for purposes of section  
7           502(c)(2) of the Employee Retirement Income Secu-  
8           rity Act of 1974 as a failure or refusal by the plan  
9           administrator to file the annual report required to  
10          be filed with the Secretary of Labor under section  
11          101(b)(4) of such Act.

12          “(6) REHABILITATION PLAN ADOPTION PE-  
13          RIOD.—For purposes of this section, the term ‘reha-  
14          bilitation plan adoption period’ means the period be-  
15          ginning on the date of the certification under sub-  
16          section (b)(3)(A) for the initial critical year and end-  
17          ing on the day before the first day of the rehabilita-  
18          tion period.

19          “(7) LIMITATION ON REDUCTION IN RATES OF  
20          FUTURE ACCRUALS.—Any reduction in the rate of  
21          future accruals under any schedule described in  
22          paragraph (1)(B)(i) shall not reduce the rate of fu-  
23          ture accruals below—

24                 “(A) a monthly benefit (payable as a single  
25                 life annuity commencing at the participant’s

1 normal retirement age) equal to 1 percent of  
2 the contributions required to be made with re-  
3 spect to a participant, or the equivalent stand-  
4 ard accrual rate for a participant or group of  
5 participants under the collective bargaining  
6 agreements in effect as of the first day of the  
7 initial critical year, or

8 “(B) if lower, the accrual rate under the  
9 plan on such first day.

10 The equivalent standard accrual rate shall be deter-  
11 mined by the plan sponsor based on the standard or  
12 average contribution base units which the plan spon-  
13 sor determines to be representative for active partici-  
14 pants and such other factors as the plan sponsor de-  
15 termines to be relevant. Nothing in this paragraph  
16 shall be construed as limiting the ability of the plan  
17 sponsor to prepare and provide the bargaining par-  
18 ties with alternative schedules to the default sched-  
19 ule that established lower or higher accrual and con-  
20 tribution rates than the rates otherwise described in  
21 this paragraph.

22 “(8) EMPLOYER IMPACT.—For the purposes of  
23 this section, the plan sponsor shall consider the im-  
24 pact of the rehabilitation plan and contribution  
25 schedules authorized by this section on bargaining

1 parties with fewer than 500 employees and shall im-  
 2 plement the plan in a manner that encourages their  
 3 continued participation in the plan and minimizes fi-  
 4 nancial harm to employers and their workers.

5 “(f) RULES FOR OPERATION OF PLAN DURING  
 6 ADOPTION AND REHABILITATION PERIOD.—

7 “(1) COMPLIANCE WITH REHABILITATION  
 8 PLAN.—

9 “(A) IN GENERAL.—A plan may not be  
 10 amended after the date of the adoption of a re-  
 11 habilitation plan under subsection (e) so as to  
 12 be inconsistent with the rehabilitation plan.

13 “(B) SPECIAL RULES FOR BENEFIT IN-  
 14 CREASES.—A plan may not be amended after  
 15 the date of the adoption of a rehabilitation plan  
 16 under subsection (e) so as to increase benefits,  
 17 including future benefit accruals, unless the  
 18 plan actuary certifies that such increase is paid  
 19 for out of additional contributions not con-  
 20 templated by the rehabilitation plan, and, after  
 21 taking into account the benefit increase, the  
 22 multiemployer plan still is reasonably expected  
 23 to emerge from critical status by the end of the  
 24 rehabilitation period on the schedule con-  
 25 templated in the rehabilitation plan.

1           “(2) RESTRICTION ON LUMP SUMS AND SIMI-  
2           LAR BENEFITS.—

3           “(A) IN GENERAL.—Effective on the date  
4           the notice of certification of the plan’s critical  
5           status for the initial critical year under sub-  
6           section (b)(3)(D) is sent, and notwithstanding  
7           section 411(d)(6), the plan shall not pay—

8           “(i) any payment, in excess of the  
9           monthly amount paid under a single life  
10          annuity (plus any social security supple-  
11          ments described in the last sentence of sec-  
12          tion 411(b)(1)(A)),

13          “(ii) any payment for the purchase of  
14          an irrevocable commitment from an insurer  
15          to pay benefits, and

16          “(iii) any other payment specified by  
17          the Secretary by regulations.

18          “(B) EXCEPTION.—Subparagraph (A)  
19          shall not apply to a benefit which under section  
20          411(a)(11) may be immediately distributed  
21          without the consent of the participant or to any  
22          makeup payment in the case of a retroactive  
23          annuity starting date or any similar payment of  
24          benefits owed with respect to a prior period.

1           “(3) ADJUSTMENTS DISREGARDED IN WITH-  
 2       DRAWAL LIABILITY DETERMINATION.—Any benefit  
 3       reductions under this subsection shall be disregarded  
 4       in determining a plan’s unfunded vested benefits for  
 5       purposes of determining an employer’s withdrawal li-  
 6       ability under section 4201 of the Employee Retire-  
 7       ment Income Security Act of 1974.

8           “(4) SPECIAL RULES FOR PLAN ADOPTION PE-  
 9       RIOD.—During the rehabilitation plan adoption  
 10      period—

11           “(A) the plan sponsor may not accept a  
 12       collective bargaining agreement or participation  
 13       agreement with respect to the multiemployer  
 14       plan that provides for—

15           “(i) a reduction in the level of con-  
 16       tributions for any participants,

17           “(ii) a suspension of contributions  
 18       with respect to any period of service, or

19           “(iii) any new direct or indirect exclu-  
 20       sion of younger or newly hired employees  
 21       from plan participation, and

22           “(B) no amendment of the plan which in-  
 23       creases the liabilities of the plan by reason of  
 24       any increase in benefits, any change in the ac-  
 25       crual of benefits, or any change in the rate at

which benefits become nonforfeitable under the plan may be adopted unless the amendment is required as a condition of qualification under part I of subchapter D of chapter 1 or to comply with other applicable law.

“(5) FAILURE TO MEET REQUIREMENTS.—

“(A) IN GENERAL.—Notwithstanding section 4971(g), if a plan—

“(i) fails to meet the requirements of subsection (e) by the end of the rehabilitation period, or

“(ii) has received a certification under subsection (b)(3)(A)(ii) for 3 consecutive plan years that the plan is not making the scheduled progress in meeting its requirements under the rehabilitation plan,

the plan shall be treated as having an accumulated funding deficiency for purposes of section 4971 for the last plan year in such period (and each succeeding plan year until such requirements are met) in an amount equal to the greater of the amount of the contributions necessary to meet such requirements or the amount of such accumulated funding deficiency without regard to this paragraph.

1           “(B) WAIVER.—In the case of a failure de-  
 2           scribed in subparagraph (A) which is due to  
 3           reasonable cause and not to willful neglect, the  
 4           Secretary may waive part or all of the tax im-  
 5           posed by section 4971 to the extent that the  
 6           payment of such tax would be excessive or oth-  
 7           erwise inequitable relative to the failure in-  
 8           volved.

9           “(g) EXPEDITED RESOLUTION OF PLAN SPONSOR  
 10          DECISIONS.—If, within 60 days of the due date for adop-  
 11          tion of a funding improvement plan under subsection (c)  
 12          or a rehabilitation plan under subsection (e), the plan  
 13          sponsor of a plan in endangered status or a plan in critical  
 14          status has not agreed on a funding improvement plan or  
 15          rehabilitation plan, then any member of the board or  
 16          group that constitutes the plan sponsor may require that  
 17          the plan sponsor enter into an expedited dispute resolution  
 18          procedure for the development and adoption of a funding  
 19          improvement plan or rehabilitation plan.

20          “(h) NONBARGAINED PARTICIPATION.—

21               “(1) BOTH BARGAINED AND NONBARGAINED  
 22          EMPLOYEE-PARTICIPANTS.—In the case of an em-  
 23          ployer that contributes to a multiemployer plan with  
 24          respect to both employees who are covered by one or  
 25          more collective bargaining agreements and to em-

1        ployees who are not so covered, if the plan is in en-  
 2        dangered status or in critical status, benefits of and  
 3        contributions for the nonbargained employees, in-  
 4        cluding surcharges on those contributions, shall be  
 5        determined as if those nonbargained employees were  
 6        covered under the first to expire of the employer's  
 7        collective bargaining agreements in effect when the  
 8        plan entered endangered or critical status.

9            “(2) NONBARGAINED EMPLOYEES ONLY.—In  
 10        the case of an employer that contributes to a multi-  
 11        employer plan only with respect to employees who  
 12        are not covered by a collective bargaining agreement,  
 13        this section shall be applied as if the employer were  
 14        the bargaining parties, and its participation agree-  
 15        ment with the plan was a collective bargaining  
 16        agreement with a term ending on the first day of the  
 17        plan year beginning after the employer is provided  
 18        the schedule or schedules described in subsections  
 19        (c) and (e).

20            “(3) EMPLOYEES COVERED BY A COLLECTIVE  
 21        BARGAINING AGREEMENT.—The determination as to  
 22        whether an employee covered by a collective bar-  
 23        gaining agreement for purposes of this section shall  
 24        be made without regard to the special rule in Treas-  
 25        ury Regulation section 1.410(b)–6(d)(ii)(D).



1       “(i) DEFINITIONS; ACTUARIAL METHOD.—For pur-  
2 poses of this section—

3               “(1) BARGAINING PARTY.—The term ‘bar-  
4 gaining party’ means—

5                       “(A)(i) except as provided in clause (ii), an  
6 employer who has an obligation to contribute  
7 under the plan; or

8                       “(ii) in the case of a plan described under  
9 section 404(c), or a continuation of such a plan,  
10 the association of employers that is the em-  
11 ployee settlor of the plan; and

12                      “(B) an employee organization which, for  
13 purposes of collective bargaining, represents  
14 plan participants employed by an employer who  
15 has an obligation to contribute under the plan.

16               “(2) FUNDED PERCENTAGE.—The term ‘fund-  
17 ed percentage’ means the percentage equal to a  
18 fraction—

19                      “(A) the numerator of which is the value  
20 of the plan’s assets, as determined under sec-  
21 tion 431(c)(2), and

22                      “(B) the denominator of which is the ac-  
23 crued liability of the plan, determined using ac-  
24 tuarial assumptions described in section  
25 431(c)(3).

1           “(3) ACCUMULATED FUNDING DEFICIENCY.—

2           The term ‘accumulated funding deficiency’ has the  
3           meaning given such term in section 412(a).

4           “(4) ACTIVE PARTICIPANT.—The term ‘active  
5           participant’ means, in connection with a multiem-  
6           ployer plan, a participant who is in covered service  
7           under the plan.

8           “(5) INACTIVE PARTICIPANT.—The term ‘inac-  
9           tive participant’ means, in connection with a multi-  
10          employer plan, a participant, or the beneficiary or  
11          alternate payee of a participant, who—

12                 “(A) is not in covered service under the  
13                 plan, and

14                 “(B) is in pay status under the plan or has  
15                 a nonforfeitable right to benefits under the  
16                 plan.

17          “(6) PAY STATUS.—A person is in pay status  
18          under a multiemployer plan if—

19                 “(A) at any time during the current plan  
20                 year, such person is a participant or beneficiary  
21                 under the plan and is paid an early, late, nor-  
22                 mal, or disability retirement benefit under the  
23                 plan (or a death benefit under the plan related  
24                 to a retirement benefit), or

1           “(B) to the extent provided in regulations  
2           of the Secretary, such person is entitled to such  
3           a benefit under the plan.

4           “(7) OBLIGATION TO CONTRIBUTE.—The term  
5           ‘obligation to contribute’ has the meaning given such  
6           term under section 4212(a) of the Employee Retirement  
7           Income Security Act of 1974.

8           “(8) ACTUARIAL METHOD.—Notwithstanding  
9           any other provision of this section, the actuary’s de-  
10          terminations with respect to a plan’s normal cost,  
11          actuarial accrued liability, and improvements in a  
12          plan’s funded percentage under this section shall be  
13          based upon the unit credit funding method (whether  
14          or not that method is used for the plan’s actuarial  
15          valuation).

16          “(9) PLAN SPONSOR.—In the case of a plan de-  
17          scribed under section 404(c), or a continuation of  
18          such a plan, the term ‘plan sponsor’ means the bar-  
19          gaining parties described under paragraph (1).”

20          (b) EFFECTIVE DATES.—

21               (1) IN GENERAL.—The amendment made by  
22               this section shall apply with respect to plan years be-  
23               ginning after 2006.

24               (2) SPECIAL RULE FOR CERTAIN RESTORED  
25               BENEFITS.—In the case of a multiemployer plan—

1 (A) with respect to which benefits were re-  
2 duced pursuant to a plan amendment adopted  
3 on or after January 1, 2002, and before June  
4 30, 2005, and

5 (B) which, pursuant to the plan document,  
6 the trust agreement, or a formal written com-  
7 munication from the plan sponsor to partici-  
8 pants provided before June 30, 2005, provided  
9 for the restoration of such benefits,  
10 the amendments made by this section shall not apply  
11 to such benefit restorations to the extent that any  
12 restriction on the providing or accrual of such bene-  
13 fits would otherwise apply by reason of such amend-  
14 ments.

15 **PART III—SUNSET OF FUNDING RULES**

16 **SEC. 216. SUNSET OF FUNDING RULES.**

17 (a) REPORT.—Not later than December 31, 2011,  
18 the Secretary of Labor, the Secretary of the Treasury, and  
19 the Executive Director of the Pension Benefit Guaranty  
20 Corporation shall conduct a study of the effect of the  
21 amendments made by this subtitle on the operation and  
22 funding status of multiemployer plans and shall report the  
23 results of such study, including any recommendations for  
24 legislation, to the Congress.

1 (b) MATTERS INCLUDED IN STUDY.—The study re-  
2 quired under subsection (a) shall include—

3 (1) the effect of funding difficulties, funding  
4 rules in effect before the date of the enactment of  
5 this Act, and the amendments made by this subtitle  
6 on small businesses participating in multiemployer  
7 plans,

8 (2) the effect on the financial status of small  
9 employers of—

10 (A) funding targets set in funding im-  
11 provement and rehabilitation plans and associ-  
12 ated contribution increases,

13 (B) funding deficiencies,

14 (C) excise taxes,

15 (D) withdrawal liability,

16 (E) the possibility of alternatives schedules  
17 and procedures for financially-troubled employ-  
18 ers, and

19 (F) other aspects of the multiemployer sys-  
20 tem, and

21 (3) the role of the multiemployer pension plan  
22 system in helping small employers to offer pension  
23 benefits.

24 (c) SUNSET.—

1           (1) IN GENERAL.—Except as provided in this  
2 subsection, notwithstanding any other provision of  
3 this Act, the provisions of, and the amendments  
4 made by, this subtitle shall not apply to plan years  
5 beginning after December 31, 2014, and the Em-  
6 ployee Retirement Income Security Act of 1974 and  
7 the Internal Revenue Code of 1986 shall be applied  
8 to such plan years under the provisions of sections  
9 302 through 308 of such Act and 412 of such Code  
10 (as in effect before the amendments made by this  
11 Act).

12           (2) FUNDING IMPROVEMENT AND REHABILITA-  
13 TION PLANS.—If a plan is operating under a fund-  
14 ing improvement or rehabilitation plan under section  
15 305 of such Act or 432 of such Code for its last  
16 year beginning before January 1, 2015, such plan  
17 shall continue to operate under such funding im-  
18 provement or rehabilitation plan during any period  
19 after December 31, 2014, such funding improvement  
20 or rehabilitation plan is in effect and all provisions  
21 of such Act or Code relating to the operation of such  
22 funding improvement or rehabilitation plan shall  
23 continue in effect during such period.

24           (3) AMORTIZATION SCHEDULES.—In the case  
25 of any amount amortized under section 304(b) of

1 such Act or 431 of such Code (as in effect after the  
 2 amendments made by this subtitle) over any period  
 3 beginning with a plan year beginning before January  
 4 1, 2015, such amount shall, in lieu of the amortiza-  
 5 tion which would apply after the application of this  
 6 subsection, continue to be amortized under such sec-  
 7 tion 304 or 431 (as so in effect).

## 8 **Subtitle B—Deduction and Related** 9 **Provisions**

### 10 **SEC. 221. DEDUCTION LIMITS FOR MULTIEMPLOYER** 11 **PLANS.**

12 (a) INCREASE IN DEDUCTION.—Section  
 13 404(a)(1)(D) of the Internal Revenue Code of 1986, as  
 14 amended by this Act, is amended to read as follows:

15 “(D) AMOUNT DETERMINED ON BASIS OF  
 16 UNFUNDED CURRENT LIABILITY.—

17 “(i) IN GENERAL.—In the case of a  
 18 defined benefit plan which is a multiem-  
 19 ployer plan, except as provided in regula-  
 20 tions, the maximum amount deductible  
 21 under the limitations of this paragraph  
 22 shall not be less than the unfunded current  
 23 liability of the plan.

24 “(ii) UNFUNDED CURRENT LIABIL-  
 25 ITY.—For purposes of clause (i), the term

1                   ‘unfunded current liability’ means the ex-  
2                   cess (if any) of—

3                   “(I) 140 percent of the current  
4                   liability of the plan determined under  
5                   section 431(c)(6)(C), over

6                   “(II) the value of the plan’s as-  
7                   sets determined under section  
8                   431(c)(2).”.

9           (b) EXCEPTION FROM LIMITATION ON DEDUCTION  
10 WHERE COMBINATION OF DEFINED CONTRIBUTION AND  
11 DEFINED BENEFIT PLANS.—

12           (1) IN GENERAL.—Section 404(a)(7)(C) of such  
13 Code, as amended by this Act, is amended by adding  
14 at the end the following new clause:

15                   “(v) MULTIEMPLOYER PLANS.—In ap-  
16                   plying this paragraph, any multiemployer  
17                   plan shall not be taken into account.”.

18           (2) CONFORMING AMENDMENT.—Section  
19 404(a)(7)(A) of such Code is amended by striking  
20 the last sentence.

21           (c) EFFECTIVE DATES.—

22           (1) DEDUCTION LIMIT.—The amendment made  
23 by subsection (a) shall apply to years beginning after  
24 December 31, 2006.



1           (2) EXCEPTION.—The amendments made by  
 2           subsection (b) shall apply to years beginning after  
 3           December 31, 2005.

4   **SEC. 222. TRANSFER OF EXCESS PENSION ASSETS TO MUL-**  
 5                   **TIEMPLOYER HEALTH PLAN.**

6           (a) IN GENERAL.—Section 420(e) of the Internal  
 7           Revenue Code of 1986 (relating to definitions and special  
 8           rules) is amended by adding at the end the following new  
 9           paragraph:

10           “(5) APPLICATION TO MULTIEMPLOYER  
 11           PLAN.—In the case of any plan to which section  
 12           404(c) applies (or any successor plan primarily cov-  
 13           ering employees in the building and construction in-  
 14           dustry)—

15           “(A) the prohibition under subsection (a)  
 16           on the application of this section to a multiem-  
 17           ployer plan shall not apply, and

18           “(B) this section shall be applied to any  
 19           such plan—

20           “(i) by treating any reference in this  
 21           section to an employer as a reference to all  
 22           employers maintaining the plan (or, if ap-  
 23           propriate, the plan sponsor), and

24           “(ii) in accordance with such modi-  
 25           fications of this section (and the provisions

1 of this title and the Employee Retirement  
2 Income Security Act of 1974 relating to  
3 this section) as the Secretary determines  
4 appropriate to reflect the fact the plan is  
5 not maintained by a single employer.”

6 (b) AMENDMENTS OF ERISA.—

7 (1) Section 101(e)(3) of the Employee Retirement  
8 Income Security Act of 1974 (29 U.S.C.  
9 1021(e)(3)) is amended by striking “American Jobs  
10 Creation Act of 2004” and inserting “Pension Security  
11 and Transparency Act of 2005”.

12 (2) Section 403(c)(1) of such Act (29 U.S.C.  
13 1103(c)(1)) is amended by striking “American Jobs  
14 Creation Act of 2004” and inserting “Pension Security  
15 and Transparency Act of 2005”.

16 (3) Section 408(b)(13) of such Act (29 U.S.C.  
17 1108(b)(13)) is amended by striking “American  
18 Jobs Creation Act of 2004” and inserting “Pension  
19 Security and Transparency Act of 2005”.

20 (c) EFFECTIVE DATE.—The amendment made by  
21 this section shall apply to transfers made in taxable years  
22 beginning after December 31, 2004.

# **TITLE III—INTEREST RATE ASSUMPTIONS**

## **SEC. 301. INTEREST RATE ASSUMPTION FOR DETERMINA- TION OF LUMP SUM DISTRIBUTIONS.**

### **(a) AMENDMENTS OF ERISA.—**

(1) **IN GENERAL.**—Section 205(g)(3)(A) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1055(g)(3)(A)) is amended by adding at the end the following new sentence: “In the case of plan years beginning after 2006, the preceding sentence shall be applied by using the applicable yield curve method under subparagraph (C) rather than the applicable interest rate.”.

(2) **APPLICABLE YIELD CURVE METHOD.**—Section 205(g)(3) of such Act (29 U.S.C. 1055(g)(3)) is amended by adding at the end the following new subparagraphs:

“(C) **APPLICABLE YIELD CURVE METHOD.**—For purposes of subparagraph (A), the term ‘applicable yield curve method’ means—

“(i) the phase-in yield curve method in the case of plan years beginning in 2007, 2008, and 2009, and

“(ii) the yield curve method for years beginning after 2009.

1                   “(D) YIELD CURVE METHOD.—For pur-  
2 poses of this paragraph—

3                   “(i) IN GENERAL.—The yield curve  
4 method is a method under which present  
5 value is determined—

6                   “(I) by using interest rates  
7 drawn from a yield curve which is pre-  
8 scribed by the Secretary of the Treas-  
9 ury and which reflects the yield on  
10 high-quality corporate bonds with  
11 varying maturities, and

12                   “(II) by matching the timing of  
13 the expected benefit payments under  
14 the plan to the interest rates on such  
15 yield curve.

16                   “(ii) PUBLICATION.—Each month the  
17 Secretary of the Treasury shall publish any  
18 yield curve prescribed under this subpara-  
19 graph which shall apply to plan years be-  
20 ginning in such month and such yield  
21 curve shall be based on average interest  
22 rates for business days occurring during  
23 the 3 preceding months.

24                   “(E) PHASE-IN YIELD CURVE METHOD.—

1 “(i) IN GENERAL.—Present value de-  
 2 termined under the phase-in yield curve  
 3 method shall be equal to the sum of—

4 “(I) the applicable percentage of  
 5 such amount determined under the  
 6 yield curve method described in sub-  
 7 paragraph (D), and

8 “(II) the product of such amount  
 9 determined by using the applicable in-  
 10 terest rate and a percentage equal to  
 11 100 percent minus the applicable per-  
 12 centage.

13 “(ii) APPLICABLE PERCENTAGE.—For  
 14 purposes of clause (i), the applicable per-  
 15 centage is 25 percent for plan years begin-  
 16 ning in 2007, 50 percent for plan years be-  
 17 ginning in 2008, and 75 percent for plan  
 18 years beginning in 2009.”.

19 (b) AMENDMENTS OF INTERNAL REVENUE CODE.—

20 (1) IN GENERAL.—Section 417(e)(3)(A) of the  
 21 Internal Revenue Code of 1986 (relating to deter-  
 22 mination of present value) is amended by adding at  
 23 the end the following new sentence: “In the case of  
 24 plan years beginning after 2006, the preceding sen-  
 25 tence shall be applied by using the applicable yield

1 curve method under subparagraph (C) rather than  
 2 the applicable interest rate.”

3 (2) APPLICABLE YIELD CURVE METHOD.—Sec-  
 4 tion 417(e) of such Code is amended by adding at  
 5 the end the following new subparagraphs:

6 “(C) APPLICABLE YIELD CURVE METH-  
 7 OD.—For purposes of subparagraph (A), the  
 8 term ‘applicable yield curve method’ means—

9 “(i) the phase-in yield curve method  
 10 in the case of plan years beginning in  
 11 2007, 2008, and 2009, and

12 “(ii) the yield curve method for years  
 13 beginning after 2009.

14 “(D) YIELD CURVE METHOD.—For pur-  
 15 poses of this paragraph—

16 “(i) IN GENERAL.—The yield curve  
 17 method is a method under which present  
 18 value is determined—

19 “(I) by using interest rates  
 20 drawn from a yield curve which is pre-  
 21 scribed by the Secretary and which re-  
 22 flects the yield on high-quality cor-  
 23 porate bonds with varying maturities,  
 24 and

1                   “(II) by matching the timing of  
2                   the expected benefit payments under  
3                   the plan to the interest rates on such  
4                   yield curve.

5                   “(ii) PUBLICATION.—Each month the  
6                   Secretary shall publish any yield curve pre-  
7                   scribed under this subparagraph which  
8                   shall apply to plan years beginning in such  
9                   month and such yield curve shall be based  
10                  on average interest rates for business days  
11                  occurring during the 3 preceding months.

12                  “(E) PHASE-IN YIELD CURVE METHOD.—

13                  “(i) IN GENERAL.—Present value de-  
14                  termined under the phase-in yield curve  
15                  method shall be equal to the sum of—

16                         “(I) the applicable percentage of  
17                         such amount determined under the  
18                         yield curve method described in sub-  
19                         paragraph (D), and

20                         “(II) the product of such amount  
21                         determined by using the applicable in-  
22                         terest rate and a percentage equal to  
23                         100 percent minus the applicable per-  
24                         centage.

1                   “(ii) APPLICABLE PERCENTAGE.—For  
 2                   purposes of clause (i), the applicable per-  
 3                   centage is 25 percent for plan years begin-  
 4                   ning in 2007, 50 percent for plan years be-  
 5                   ginning in 2008, and 75 percent for plan  
 6                   years beginning in 2009.”.

7           (c) SPECIAL RULE FOR PLAN AMENDMENTS.—A  
 8           plan shall not fail to meet the requirements of section  
 9           204(g) of the Employee Retirement Income Security Act  
 10          of 1974 or section 411(d)(6) of the Internal Revenue Code  
 11          of 1986 solely by reason of the adoption by the plan of  
 12          an amendment necessary to meet the requirements of the  
 13          amendments made by this section.

14          (d) EFFECTIVE DATE.—The amendments made by  
 15          this section shall apply with respect to plan years begin-  
 16          ning after 2006.

17   **SEC. 302. INTEREST RATE ASSUMPTION FOR APPLYING**  
 18                   **BENEFIT LIMITATIONS TO LUMP SUM DIS-**  
 19                   **TRIBUTIONS.**

20          (a) IN GENERAL.—Clause (ii) of section  
 21          415(b)(2)(E) of the Internal Revenue Code of 1986 is  
 22          amended to read as follows:

23                   “(ii) For purposes of adjusting any  
 24                   benefit under subparagraph (B) for any  
 25                   form of benefit subject to section



1                   417(e)(3), clause (i) shall be applied by  
 2                   substituting ‘5.5 percent’ for ‘5 percent’.”.

3           (b) **EFFECTIVE DATE.**—The amendment made by  
 4 subsection (a) shall apply to years beginning after Decem-  
 5 ber 31, 2005.

6 **SEC. 303. RESTRICTIONS ON FUNDING OF NONQUALIFIED**  
 7 **DEFERRED COMPENSATION PLANS BY EM-**  
 8 **PLOYERS MAINTAINING UNDERFUNDED OR**  
 9 **TERMINATED SINGLE-EMPLOYER PLANS.**

10       (a) **AMENDMENTS OF ERISA.**—

11           (1) **IN GENERAL.**—Part 3 of subtitle A of title  
 12 I of the Employee Retirement Income Security Act  
 13 of 1974 (29 U.S.C. 1081 et seq.), as amended by  
 14 this Act, is amended by adding at the end the fol-  
 15 lowing new section:

16       “NOTICE OF FUNDING OF NONQUALIFIED DEFERRED  
 17                                   COMPENSATION PLANS

18       “SEC. 306. (a) **NOTICE AND ACCESS.**—

19           “(1) **NOTICE RELATING TO RESTRICTED PE-**  
 20 **RIOD.**—The plan administrator of a defined benefit  
 21 plan which is a single-employer plan shall notify  
 22 each plan sponsor of the plan within a reasonable  
 23 period of time after the occurrence of an event which  
 24 results in a restricted period with respect to the  
 25 plan. Such notice shall include information—

1           “(A) as to the duration of the restricted  
2           period, and

3           “(B) the restrictions under section  
4           409A(b)(3) of the Internal Revenue Code of  
5           1986 which apply during the restricted period  
6           to the plan sponsor and any member of a con-  
7           trolled group which includes such sponsor.

8           “(2) NOTICE OF EXISTENCE OF, AND TRANS-  
9           FERS TO, NONQUALIFIED DEFERRED COMPENSATION  
10          PLANS.—

11           “(A) INITIAL NOTICE.—Within 30 days of  
12           receipt of a notice under paragraph (1), each  
13           plan sponsor shall notify the plan administrator  
14           of the plan described in paragraph (1)—

15           “(i) of nonqualified deferred com-  
16           pensation plans maintained by the plan  
17           sponsor or any member of a controlled  
18           group which includes such sponsor, and

19           “(ii) the amount of any assets trans-  
20           ferred or otherwise reserved by the plan  
21           sponsor or such member in violation of sec-  
22           tion 409A(b)(3) of such Code during any  
23           portion of the restricted period occurring  
24           on or before the date the plan sponsor pro-  
25           vides such notice.

1           “(B) ADDITIONAL NOTICES.—If, after the  
 2           date on which notice is provided under subpara-  
 3           graph (A) and during any portion of the re-  
 4           maining restricted period specified in the notice  
 5           provided under paragraph (1), the plan sponsor  
 6           of a plan described in paragraph (1) or a mem-  
 7           ber of a controlled group which includes such  
 8           sponsor—

9                   “(i) transfers or reserves assets in vio-  
 10                  lation of section 409A(b)(3) of such Code,  
 11                  or

12                  “(ii) establishes a new nonqualified  
 13                  deferred compensation plan,  
 14           the plan sponsor shall notify the plan adminis-  
 15           trator of the plan described in paragraph (1) of  
 16           such transfer, reservation, or establishment  
 17           within 3 days of the date of such action.

18           “(3) ACCESS TO FINANCIAL DATA.—Any fidu-  
 19           ciary of the plan shall have access to the financial  
 20           records of a plan sponsor or any member of a con-  
 21           trolled group which includes such sponsor to deter-  
 22           mine if assets were transferred or otherwise reserved  
 23           in violation of section 409A(b)(3) of such Code.

24           “(4) FORM AND MANNER.—The Secretary may  
 25           prescribe the form and manner of a notice required

1       under this section. Such a notice shall be written in  
2       a manner calculated to be understood by the average  
3       plan participant and may be delivered in written,  
4       electronic, or other appropriate form to the extent  
5       that such form is reasonably accessible to the recipi-  
6       ent.

7       “(b) RESTRICTED PERIOD.—For purposes of this  
8       section, the term ‘restricted period’ means, with respect  
9       to any plan described in subsection (a)(1)—

10           “(1) any period—

11               “(A) beginning on the first day of a plan  
12               year following a plan year for which the plan’s  
13               adjusted funding target attainment percentage  
14               (as defined in section 303) was less than 60  
15               percent (determined as of the close of such  
16               year), and

17               “(B) ending on the last day of the first pe-  
18               riod of 2 consecutive plan years (beginning on  
19               or after such first day) for which such percent-  
20               age was at least 60 percent,

21           “(2) any period the plan sponsor is in bank-  
22       ruptcy, and

23           “(3) the 12-month period beginning on the date  
24       which is 6 months before the termination date of the  
25       plan if, as of the termination date, the plan is not

1 sufficient for benefit liabilities (within the meaning  
2 of section 4041).

3 In the case of a plan which is in at-risk status, paragraph  
4 (1) shall be applied by substituting ‘80 percent’ for ‘60  
5 percent’ each place it appears.

6 “(c) NONQUALIFIED DEFERRED COMPENSATION  
7 PLAN.—For purposes of this section—

8 “(1) IN GENERAL.—The term ‘nonqualified de-  
9 ferred compensation plan’ means any plan that pro-  
10 vides for the deferral of compensation, other than—

11 “(A) a qualified employer plan, and

12 “(B) any bona fide vacation leave, sick  
13 leave, compensatory time, disability pay, or  
14 death benefit plan.

15 “(2) QUALIFIED EMPLOYER PLAN.—The term  
16 ‘qualified employer plan’ means—

17 “(A) any plan, contract, pension, account,  
18 or trust described in subparagraph (A) or (B)  
19 of section 219(g)(5) of the Internal Revenue  
20 Code of 1986 (without regard to subparagraph  
21 (A)(iii)),

22 “(B) any eligible deferred compensation  
23 plan (within the meaning of section 457(b)) of  
24 such Code, and

1           “(C) any plan described in section 415(m)  
2           of such Code.

3           “(3) PLAN INCLUDES ARRANGEMENTS, ETC.—

4           The term ‘plan’ includes any agreement or arrange-  
5           ment, including an agreement or arrangement that  
6           includes one person.

7           “(d) OTHER DEFINITIONS.—For purposes of this  
8           section—

9           “(1) APPLICABLE COVERED EMPLOYEE.—

10           “(A) IN GENERAL.—The term ‘applicable  
11           covered employee’ means any—

12                   “(i) covered employee of a plan spon-  
13                   sor,

14                   “(ii) covered employee of a member of  
15                   a controlled group which includes the plan  
16                   sponsor, and

17                   “(iii) former employee who was a cov-  
18                   ered employee at the time of termination of  
19                   employment with the plan sponsor or a  
20                   member of a controlled group which in-  
21                   cludes the plan sponsor.

22           “(B) COVERED EMPLOYEE.—The term  
23           ‘covered employee’ has the meaning given such  
24           term by section 162(m)(3) of the Internal Rev-  
25           enue Code of 1986.

1           “(2) CONTROLLED GROUP.—The term ‘con-  
 2           trolled group’ has the meaning given such term by  
 3           section 302(d)(3).”.

4           (2) ENFORCEMENT.—

5           (A) IN GENERAL.—Section 502(a) of the  
 6           Employee Retirement Income Security Act (29  
 7           U.S.C. 1132(a)), as amended by this Act, is  
 8           amended—

9                   (i) by striking “or” at the end of  
 10                   paragraph (9), by striking the period at  
 11                   the end of paragraph (10) and inserting “;  
 12                   or”, and by adding at the end the following  
 13                   new paragraph:

14           “(11) by a fiduciary of a defined benefit plan  
 15           which is a single-employer plan against—

16                   “(A) a plan sponsor, a member of a con-  
 17                   trolled group which includes the plan sponsor,  
 18                   an applicable covered employee, or a person  
 19                   holding assets which are part of a nonqualified  
 20                   deferred compensation plan to recover on behalf  
 21                   of the plan—

22                   “(i) assets which were set aside or  
 23                   transferred in violation of section  
 24                   409A(b)(3) of the Internal Revenue Code

1 of 1986 (and any earnings properly allo-  
2 cable to the assets); or

3 “(ii) amounts equivalent to the assets  
4 and earnings described in clause (i); or

5 “(B) a plan sponsor, or a member of a  
6 controlled group which includes the plan spon-  
7 sor, to compel the production of records the fi-  
8 duciary is entitled to under section 306.”; and

9 (ii) by adding at the end the following  
10 new flush sentence:

11 “For purposes of paragraph (11), any term used in such  
12 paragraph which is also used in section 306 shall have  
13 the meaning given such term by section 306.”.

14 (B) AWARDING OF FEES.—Section 502(g)  
15 of such Act (29 U.S.C. 1132(g)) is amended by  
16 adding at the end the following new paragraph:

17 “(3) ACTIONS TO RECOVER ASSETS TRANS-  
18 FERRED TO NONQUALIFIED DEFERRED COMPENSA-  
19 TION PLANS.—If, in any action under subsection  
20 (a)(11) by a fiduciary for or on behalf of a plan to  
21 enforce section 306 of this Act and section  
22 409A(b)(3), a judgment is awarded in favor of the  
23 plan, the court may, in addition to any other  
24 amount, award the plan reasonable attorney’s fees



1 and costs of the action, to be paid by the defend-  
 2 ant”.

3 (3) CLERICAL AMENDMENT.—The table of con-  
 4 tents in section 1 of such Act, as amended by this  
 5 Act, is amended by adding at the end the following  
 6 new item:

“Sec. 306. Restrictions on funding of nonqualified deferred compensation  
 plans.”.

7 (b) AMENDMENTS OF INTERNAL REVENUE CODE.—

8 (1) IN GENERAL.—Subsection (b) of section  
 9 409A of the Internal Revenue Code of 1986 (pro-  
 10 viding rules relating to funding) is amended by re-  
 11 designating paragraphs (3) and (4) as paragraphs  
 12 (4) and (5), respectively, and by inserting after  
 13 paragraph (2) the following new paragraph:

14 “(3) EMPLOYERS OF UNDERFUNDED OR TERMI-  
 15 NATED DEFINED BENEFIT PLANS.—During any re-  
 16 stricted period—

17 “(A) a plan sponsor of a defined benefit  
 18 plan which is a single-employer plan, or

19 “(B) any member of a controlled group  
 20 which includes such sponsor,

21 shall not directly or indirectly transfer assets, or di-  
 22 rectly or indirectly otherwise reserve assets, in a  
 23 trust (or other arrangement determined by the Sec-  
 24 retary) for purposes of paying deferred compensa-

1       tion of an applicable covered employee under a non-  
 2       qualified deferred compensation plan of the plan  
 3       sponsor or member. Any assets transferred or re-  
 4       served in violation of the preceding sentence shall,  
 5       for purposes of section 83, be treated as property  
 6       transferred in connection with the performance of  
 7       services whether or not such assets are available to  
 8       satisfy claims of general creditors. For purposes of  
 9       this paragraph, any term used in this paragraph  
 10      which is also used in section 306 of the Employee  
 11      Retirement Income Security Act of 1974 shall have  
 12      the meaning given such term by such section.”.

13           (2) CONFORMING AMENDMENTS.—Paragraphs  
 14      (4) and (5) of section 409A(b) of such Code, as re-  
 15      designated by subsection (a) of this subsection, are  
 16      each amended by striking “paragraph (1) or (2)”  
 17      each place it appears and inserting “paragraph (1),  
 18      (2), or (3)”.

19           (c) EFFECTIVE DATE.—The amendments made by  
 20      this section shall apply to transfers or other reservation  
 21      of assets after December 31, 2006.

1 **SEC. 304. MODIFICATION OF PENSION FUNDING REQUIRE-**  
2 **MENTS FOR PLANS SUBJECT TO CURRENT**  
3 **TRANSITION RULE.**

4 (a) **PLAN YEAR BEFORE NEW FUNDING RULES.—**

5 Section 769(c)(3) of the Retirement Protection Act of  
6 1994, as added by section 201 of the Pension Funding  
7 Equity Act of 2004, is amended by striking “and 2005”  
8 and inserting “, 2005, and 2006”.

9 (b) **PLAN YEARS AFTER NEW FUNDING RULES.—**

10 (1) **IN GENERAL.**—In the case of a plan that—

11 (A) was not required to pay a variable rate  
12 premium for the plan year beginning in 1996,

13 (B) has not, in any plan year beginning  
14 after 1995, merged with another plan (other  
15 than a plan sponsored by an employer that was  
16 in 1996 within the controlled group of the plan  
17 sponsor), and

18 (C) is sponsored by a company that is en-  
19 gaged primarily in the interurban or interstate  
20 passenger bus service,

21 the rules described in subsection (b) shall apply for  
22 any plan year beginning after 2006.

23 (2) **MODIFIED RULES.**—The rules described in  
24 this subsection are as follows:

25 (A) For purposes of—

1 (i) determining unfunded benefits  
2 under section 4006(a)(3)(E)(ii) of the Em-  
3 ployee Retirement Income Security Act of  
4 1974, and

5 (ii) determining any present value or  
6 making any computation under section 412  
7 and section 430 of the Internal Revenue  
8 Code of 1986 and sections 302 and 303 of  
9 such Act,

10 the mortality table shall be the mortality table used  
11 by the plan.

12 (B) Notwithstanding section 303(f)(4) of  
13 such Act or 430(f)(4) of such Code, for pur-  
14 poses of section 303(c)(4)(A)(ii) of such Act  
15 and 430(c)(4)(A)(ii) of such Code, the value of  
16 plan assets shall not be reduced by the amount  
17 of the prefunding balance if, pursuant to a  
18 binding written agreement with the Pension  
19 Benefit Guaranty Corporation entered into be-  
20 fore January 1, 2006, the prefunding balance is  
21 not available to reduce the minimum required  
22 contribution for the plan year.

23 (3) DEFINITIONS.—Any term used in this sec-  
24 tion which is also used in section 303 of such Act

1 or section 430 of such Code shall have the meaning  
 2 provided such term in such section.

3 (4) CONFORMING AMENDMENT.—Section 769  
 4 of the Retirement Protection Act of 1994 is amend-  
 5 ed by striking subsection (c).

6 (5) EFFECTIVE DATE.—The amendments made  
 7 by this subsection shall apply to plan years begin-  
 8 ning after 2006.

## 9 **TITLE IV—IMPROVEMENTS IN** 10 **PBGC GUARANTEE PROVISIONS**

### 11 **SEC. 401. INCREASES IN PBGC PREMIUMS.**

12 (a) FLAT-RATE PREMIUMS.—

13 (1) IN GENERAL.—Section 4006(a)(3)(A)(i) of  
 14 the Employee Retirement Income Security Act of  
 15 1974 (29 U.S.C. 1306(a)(3)(A)(i)) is amended to  
 16 read as follows:

17 “(i) in the case of a single-employer  
 18 plan, an amount equal to—

19 “(I) for plan years beginning  
 20 after December 31, 1990, and before  
 21 January 1, 2006, \$19, or

22 “(II) for plan years beginning  
 23 after December 31, 2005, the amount  
 24 determined under subparagraph (H),

1 plus the additional premium (if any) deter-  
 2 mined under subparagraph (E) for each in-  
 3 dividual who is a participant in such plan  
 4 during the plan year;”.

5 (2) AMOUNT OF PREMIUM AFTER 2005.—Sec-  
 6 tion 4006(a)(3) of such Act (29 U.S.C. 1306(a)(3)),  
 7 as amended by sections 406 and 407, is amended by  
 8 adding at the end the following:

9 “(H) AMOUNT OF PREMIUM.—

10 “(i) IN GENERAL.—The amount de-  
 11 termined under this subparagraph is the  
 12 greater of \$30 or in the case of plan years  
 13 beginning after December 31, 2006, the  
 14 adjusted amount determined under clause  
 15 (ii).

16 “(ii) ADJUSTED AMOUNT.—The ad-  
 17 justed amount determined under this  
 18 clause is the product derived by multi-  
 19 plying \$30 by the ratio of—

20 “(I) the contribution and benefit  
 21 base (determined under section 230 of  
 22 the Social Security Act) in effect in  
 23 the calendar year in which the plan  
 24 year begins, to

1 “(II) the contribution and benefit  
2 base in effect in 2006.

3 “(iii) ROUNDING.—If the amount de-  
4 termined under clause (ii) is not a multiple  
5 of \$1, such product shall be rounded to the  
6 nearest multiple of \$1.”.

7 (b) RISK-BASED PREMIUMS.—

8 (1) CONFORMING AMENDMENTS RELATED TO  
9 FUNDING RULES FOR SINGLE-EMPLOYER PLANS.—

10 Section 4006(a)(3)(E) of such Act is amended by  
11 striking clauses (iii) and (iv) and inserting the fol-  
12 lowing:

13 “(iii)(I) For purposes of clause (ii), except as pro-  
14 vided in subclause (II), the term ‘unfunded benefits’  
15 means, for a plan year, the amount which would be the  
16 plan’s funding shortfall (as defined in section 303(c)(4))  
17 if the value of plan assets of the plan were equal to the  
18 fair market value of such assets.

19 “(II) The interest rate used in valuing benefits for  
20 purposes of subclause (I) shall be equal to the first, sec-  
21 ond, or third segment rate which would be determined  
22 under section 303(h)(2)(C) if section 303(h)(2)(D) were  
23 applied by using the yields on investment grade corporate  
24 bonds with varying maturities rather than the average of  
25 such yields for a 12-month period.”.

1           (2) EFFECTIVE DATE.—The amendments made  
2           by paragraph (1) shall apply with respect to plan  
3           years beginning after 2006.

4           (c) FLAT-RATE PREMIUM ADJUSTMENT.—

5           (1) IN GENERAL.—Beginning in 2011, and  
6           every 5 years thereafter, the Board of Directors of  
7           the Pension Benefit Guaranty Corporation under  
8           title IV of the Employee Retirement Income Security  
9           Act (29 U.S.C. 1301 et seq.) shall submit to Con-  
10          gress a report that describes any recommendations  
11          for adjusting the premium rate payable to the Cor-  
12          poration described under section 4006(a)(3)(A)(i) of  
13          such Act (as amended by subsection (a)).

14          (2) CONSIDERATIONS.—In developing the re-  
15          port described under paragraph (1), the Corporation  
16          shall consider—

17                (A) the national average wage index (as  
18                defined in section 209(k)(1) of the Social Secu-  
19                rity Act (42 U.S.C. 409(k)(1)));

20                (B) the finances of the Corporation as of  
21                the date of such report and an actuarial evalua-  
22                tion of the expected operations and status of  
23                the funds established under section 4005 of  
24                such title IV (29 U.S.C. 1305) for the 5 years  
25                succeeding such date;



1 (C) the impact of any increases in such  
 2 premium rate on plan sponsors subject to such  
 3 title IV; and

4 (D) such other factors determined relevant  
 5 by the Corporation.

6 **SEC. 402. AUTHORITY TO ENTER ALTERNATIVE FUNDING**  
 7 **AGREEMENTS TO PREVENT PLAN TERMI-**  
 8 **NATIONS.**

9 (a) AUTHORITY TO ENTER INTO AGREEMENTS.—

10 (1) DISTRESS TERMINATIONS.—Section 4041(c)  
 11 of the Employee Retirement Income Security Act of  
 12 1974 (29 U.S.C. 1341(c)) is amended by adding at  
 13 the end the following:

14 “(4) ALTERNATIVE FUNDING AGREEMENTS.—

15 “(A) IN GENERAL.—If the corporation de-  
 16 termines that—

17 “(i) a plan meets the requirements for  
 18 a distress termination under this sub-  
 19 section without regard to an alternative  
 20 funding agreement under section 4047(a),  
 21 and

22 “(ii) the termination of the plan  
 23 would not be necessary if such an agree-  
 24 ment were entered into,

1 the corporation may request that the Secretary  
2 of the Treasury, in consultation with the cor-  
3 poration, enter into such an agreement with the  
4 contributing sponsors under the plan.

5 “(B) EARLY ACTION INITIATIVES.—Sub-  
6 ject to the limitations in subsection (a)(3), if—

7 “(i) the corporation determines that it  
8 is reasonable to believe that a plan may be  
9 subject to a distress termination within 6  
10 months unless action is taken, the corpora-  
11 tion may request that the Secretary of the  
12 Treasury, in consultation with the corpora-  
13 tion, enter into an alternative funding  
14 agreement under section 4047(a); and

15 “(ii) the corporation, upon the request  
16 of the contributing sponsor of a plan or  
17 other person, determines that it is reason-  
18 able to believe that a plan may be subject  
19 to a distress termination within 2 years  
20 unless action is taken, the corporation may  
21 request that the Secretary of the Treasury,  
22 in consultation with the corporation, enter  
23 into an alternative funding agreement  
24 under section 4047(a).”.

1           (2) INVOLUNTARY TERMINATIONS.—Section  
 2           4042 of the Employee Retirement Income Security  
 3           Act of 1974 (29 U.S.C. 1342) is amended by adding  
 4           at the end the following:

5           “(i) ALTERNATIVE FUNDING AGREEMENTS.—If—

6                 “(1) the corporation determines that it is rea-  
 7                 sonable to believe that a plan will meet the require-  
 8                 ments for an involuntary termination under this sec-  
 9                 tion without regard to an alternative funding agree-  
 10                ment under section 4047(a) within 6 months unless  
 11                action is taken, or

12               “(B) the corporation, upon the request of the  
 13               contributing sponsor of a plan or other person, de-  
 14               termines that it is reasonable to believe that a plan  
 15               may be subject to an involuntary termination within  
 16               2 years unless action is taken,

17           and such a termination would not be necessary if such  
 18           an agreement is entered into, the corporation may request  
 19           that the Secretary of the Treasury, in consultation with  
 20           the corporation, enter into an alternative funding agree-  
 21           ment under section 4047(a).”.

22           (b) ALTERNATIVE FUNDING SCHEDULES TO PRE-  
 23           VENT PLAN TERMINATION.—

1           (1) IN GENERAL.—Section 4047 of the Em-  
 2       ployee Retirement Income Security Act of 1974 (29  
 3       U.S.C. 1347) is amended by—

4                   (A) striking the section heading and all  
 5       that follows through “Whenever” and  
 6       inserting—

7   **“SEC. 4047. ALTERNATIVE FUNDING SCHEDULES TO PRE-**  
 8                   **VENT TERMINATION; RESTORATION OF TER-**  
 9                   **MINATED PLANS.**

10       “(a) ALTERNATIVE FUNDING AGREEMENTS.—

11               “(1) IN GENERAL.—If the requirements of sec-  
 12       tion 4041(c)(4) or 4042(i) are met with respect to  
 13       any plan, the Secretary of the Treasury, in consulta-  
 14       tion with the corporation, may enter into an alter-  
 15       native funding agreement with the contributing  
 16       sponsors under the plan that meets the requirements  
 17       of this subsection.

18               “(2) OTHER REQUIREMENTS.—An alternative  
 19       funding agreement may be entered into by the Sec-  
 20       retary of the Treasury, in consultation with corpora-  
 21       tion, only if—

22                   “(A) such Secretary finds the agreement to  
 23       be in the best interests of the participants and  
 24       beneficiaries; and

1           “(B) the agreement meets the require-  
2           ments set forth by such Secretary in regula-  
3           tions.

4           “(3) ALTERNATIVE FUNDING AGREEMENT.—

5           “(A) IN GENERAL.—An agreement meets  
6           the requirements of this subsection if the  
7           agreement—

8                   “(i) provides for an additional amorti-  
9                   zation schedule for a period not to exceed  
10                  10 years,

11                  “(ii) requires the plan to pay at the  
12                  time the agreement is entered into any  
13                  professional fees or other expenses in-  
14                  curred by the Secretary of the Treasury or  
15                  the corporation in connection with the  
16                  agreements,

17                  “(iii) requires approval by the cor-  
18                  poration before the contributing sponsor  
19                  establishes or maintains any other defined  
20                  benefit plan other than any multiemployer  
21                  plan that covers a substantial number of  
22                  employees who are covered by the plan  
23                  subject to the agreement or who perform  
24                  substantially the same type of work with

1           respect to the same business operations as  
2           employees covered by such plan, and

3           “(iv) provides for a termination date,  
4           or a schedule of termination dates, for the  
5           purpose of the guarantee under section  
6           4022, to apply if a plan terminates during  
7           the period that the agreement is in effect.

8           “(B)   OTHER    CONDITIONS.—Notwith-  
9           standing any other provision of this Act, an  
10          agreement meeting the requirements of this  
11          subsection may provide—

12          “(i) for restrictions on, or the elimi-  
13          nation of, future accruals, but only to the  
14          extent that such restrictions or elimi-  
15          nations would have been permitted under  
16          section 204(g) or section 411(d)(6) of the  
17          Internal Revenue Code of 1986 if they had  
18          been implemented by a plan amendment  
19          adopted immediately before the effective  
20          date of the agreement,

21          “(ii) that the contributing sponsors  
22          will provide security or other collateral in  
23          such form and amount as specified in the  
24          agreement,

1 “(iii) conditions under which the plan  
 2 could be terminated in a standard termi-  
 3 nation under section 4041(b) or conditions  
 4 under which accruals to which clause (i)  
 5 applies could resume in the future, and

6 “(iv) for such other terms and condi-  
 7 tions as the Secretary of the Treasury, in  
 8 consultation with the corporation, deter-  
 9 mines necessary to protect the interests of  
 10 the corporation.

11 “(C) EMPLOYEE REQUIREMENTS.—

12 “(i) IN GENERAL.—An agreement  
 13 meets the requirements of this subsection  
 14 only if—

15 “(I) at least 60 days before the  
 16 agreement is to take effect the con-  
 17 tributing sponsors notify affected par-  
 18 ties (other than the corporation) of  
 19 the terms of the agreement and its ef-  
 20 fect on such parties, and

21 “(II) each employee organization  
 22 representing participants in the plan  
 23 approves the agreement before it  
 24 takes effect.

1                   “(ii) FORM AND MANNER OF NO-  
 2                   TICE.—The notice under clause (i) shall be  
 3                   written in a manner calculated to be un-  
 4                   derstood by the average plan participant  
 5                   and may be provided to a person des-  
 6                   ignated, in writing, by the person to which  
 7                   it would otherwise be provided. Such notice  
 8                   may be provided in written, electronic, or  
 9                   other appropriate form to the extent such  
 10                  form is reasonably accessible to persons to  
 11                  whom the notice is required to be provided.

12                  “(4) COORDINATION WITH MINIMUM FUNDING  
 13                  REQUIREMENTS.—Any alternative funding schedule  
 14                  under an agreement meeting the requirements under  
 15                  this subsection shall supersede the minimum funding  
 16                  requirements of this Act and the Internal Revenue  
 17                  Code of 1986. For purposes of applying this Act or  
 18                  such Code, any contribution required under such  
 19                  schedule shall be treated in the same manner as con-  
 20                  tributions required under section 302 of this Act  
 21                  and section 412 of such Code.

22                  “(b) RESTORATION OF TERMINATED PLANS.—  
 23                  Whenever”.

24                  (2) CONFORMING AMENDMENT.—The table of  
 25                  contents for title IV of such Act is amended by



1 striking the item relating to section 4047 and insert-  
 2 ing the following:

“4047. Alternative funding schedules to prevent terminations; restoration of terminated plans.”.

3 (c) AMENDMENTS TO OTHER PROVISIONS.—

4 (1) QUALIFICATION REQUIREMENT.—Section  
 5 401(a) of the Internal Revenue Code of 1986, as  
 6 amended by sections 115 and 701 of this Act, is  
 7 amended by inserting after paragraph (35) the fol-  
 8 lowing new paragraph:

9 “(36) SUCCESSOR PLANS TO CERTAIN PLANS.—  
 10 If—

11 “(A) an alternative funding agreement de-  
 12 scribed in section 4047(a) of the Employee Re-  
 13 tirement Income Security Act of 1974 is in ef-  
 14 fect with respect to any plan, and

15 “(B) the plan is maintained by an em-  
 16 ployer that establishes or maintains 1 or more  
 17 other defined benefit plans (other than any  
 18 multiemployer plan), and such other plans in  
 19 combination provide benefit accruals to any  
 20 substantial number of successor employees,

21 the Secretary may, in the Secretary’s discretion, de-  
 22 termine that any trust of which any other such plan  
 23 is a part does not constitute a qualified trust under  
 24 this subsection unless all benefit obligations of the

1 plan to which the alternative funding agreement ap-  
 2 plies have been satisfied. For purposes of this para-  
 3 graph, the term ‘successor employee’ means any em-  
 4 ployee who is or was covered by the plan to which  
 5 the alternative funding agreement applies and any  
 6 employee who performs substantially the same type  
 7 of work with respect to the same business operations  
 8 as an employee covered by such plan.”.

9 (2) LIMITATION ON DEDUCTIONS UNDER CER-  
 10 TAIN PLANS.—Section 404(a)(7)(C) of the Internal  
 11 Revenue Code of 1986 is amended by adding at the  
 12 end the following:

13 “(iii) PLANS SUBJECT TO ALTER-  
 14 NATIVE FUNDING AGREEMENTS.—This  
 15 paragraph shall not apply to any plan for  
 16 a plan year if an alternative funding agree-  
 17 ment described in section 4047(a) of the  
 18 Employee Retirement Income Security Act  
 19 of 1974 is in effect for such year.”.

20 (d) EFFECTIVE DATE.—The amendments made by  
 21 this section shall take effect on the date of enactment of  
 22 this Act.

1 **SEC. 403. SPECIAL FUNDING RULES FOR PLANS MAIN-**  
 2 **TAINED BY COMMERCIAL AIRLINES THAT**  
 3 **ARE AMENDED TO CEASE FUTURE BENEFIT**  
 4 **ACCRUALS.**

5 (a) IN GENERAL.—If an election is made to have this  
 6 section apply to an eligible plan—

7 (1) in the case of any applicable plan year be-  
 8 ginning before January 1, 2007, the plan shall not  
 9 have an accumulated funding deficiency for purposes  
 10 of section 302 of the Employee Retirement Income  
 11 Security Act of 1974 and sections 412 and 4971 of  
 12 the Internal Revenue Code of 1986 if contributions  
 13 to the plan for the plan year are not less than the  
 14 minimum required contribution determined under  
 15 subsection (d) for the plan for the plan year, and

16 (2) in the case of any applicable plan year be-  
 17 ginning on or after January 1, 2007, the minimum  
 18 required contribution determined under sections 303  
 19 of such Act and 430 of such Code shall, for purposes  
 20 of sections 302 and 303 of such Act and sections  
 21 412, 430, and 4971 of such Code, be equal to the  
 22 minimum required contribution determined under  
 23 subsection (d) for the plan for the plan year.

24 (b) ELIGIBLE PLAN.—For purposes of this section—

25 (1) IN GENERAL.—The term “eligible plan”  
 26 means a defined benefit plan (other than a multiem-

1        ployer plan) to which sections 302 of such Act and  
2        412 of such Code applies—

3                (A) which is sponsored by an employer—

4                        (i) which is a commercial airline pas-  
5                   senger airline, or

6                        (ii) the principal business of which is  
7                   providing catering services to a commercial  
8                   passenger airline, and

9                (B) with respect to which the requirements  
10           of paragraphs (2) and (3) are met.

11        (2) ACCRUAL RESTRICTIONS.—

12                (A) IN GENERAL.—The requirements of  
13           this paragraph are met if, effective as of the  
14           first day of the first applicable plan year and at  
15           all times thereafter while an election under this  
16           section is in effect, the plan provides that—

17                        (i) the accrued benefit, any death or  
18                   disability benefit, and any social security  
19                   supplement described in the last sentence  
20                   of section 411(a)(9) of such Code and sec-  
21                   tion 204(b)(1)(G) of such Act, of each par-  
22                   ticipant are frozen at the amount of such  
23                   benefit or supplement immediately before  
24                   such first day, and

1                   (ii) all other benefits under the plan  
2                   are eliminated,  
3                   but only to the extent the freezing or elimi-  
4                   nation of such benefits would have been per-  
5                   mitted under section 411(d)(6) of such Code  
6                   and section 204(g) of such Act if they had been  
7                   implemented by a plan amendment adopted im-  
8                   mediately before such first day.

9                   (B) INCREASES IN SECTION 415 LIMITS  
10                  DISREGARDED.—If a plan provides that an ac-  
11                  crued benefit of a participant which has been  
12                  subject to any limitation under section 415 of  
13                  such Code will be increased if such limitation is  
14                  increased, the plan shall not be treated as meet-  
15                  ing the requirements of this paragraph unless,  
16                  effective as of the first day of the first applica-  
17                  ble plan year and at all times thereafter while  
18                  an election under this section is in effect, the  
19                  plan provides that any such increase shall not  
20                  take effect. A plan shall not fail to meet the re-  
21                  quirements of section 411(d)(6) of such Code  
22                  and section 204(g) of such Act solely because  
23                  the plan is amended to meet the requirements  
24                  of this subparagraph.

1           (3) RESTRICTION ON APPLICABLE BENEFIT IN-  
2       CREASES.—

3           (A) IN GENERAL.—The requirements of  
4       this paragraph are met if no applicable benefit  
5       increase takes effect at any time during the pe-  
6       riod beginning on July 26, 2005, and ending on  
7       the day before the first day of the first applica-  
8       ble plan year.

9           (B) APPLICABLE BENEFIT INCREASE.—  
10       For purposes of this paragraph, the term “ap-  
11       plicable benefit increase” means, with respect to  
12       any plan year, any increase in liabilities of the  
13       plan by plan amendment (or otherwise provided  
14       in regulations provided by the Secretary) which,  
15       but for this paragraph, would occur during the  
16       plan year by reason of—

- 17                   (i) any increase in benefits,
- 18                   (ii) any change in the accrual of bene-  
19                   fits, or
- 20                   (iii) any change in the rate at which  
21                   benefits become nonforfeitable under the  
22                   plan.

23       (4) EXCEPTION FOR IMPUTED DISABILITY  
24       SERVICE.—Paragraphs (2) and (3) shall not apply  
25       to any accrual or increase with respect to imputed

1 service provided to a participant during any period  
 2 of the participant's disability occurring on or after  
 3 the effective date of the plan amendment providing  
 4 the restrictions under paragraph (2) if the  
 5 participant—

6 (A) was receiving disability benefits as of  
 7 such date, or

8 (B) was receiving sick pay and subse-  
 9 quently determined to be eligible for disability  
 10 benefits as of such date.

11 (c) ELECTIONS AND RELATED TERMS.—

12 (1) IN GENERAL.—A plan sponsor shall make  
 13 the election under subsection (a) at such time and  
 14 in such manner as the Secretary of the Treasury  
 15 may prescribe. Except as provided in subsection  
 16 (h)(5), such election, once made, may be revoked  
 17 only with the consent of such Secretary.

18 (2) YEARS FOR WHICH ELECTION MADE.—

19 (A) IN GENERAL.—The plan sponsor may  
 20 select the first plan year to which the election  
 21 under subsection (a) applies from among plan  
 22 years ending after the date of the election. The  
 23 election shall apply to such plan year and all  
 24 subsequent years.

1 (B) ELECTION OF NEW PLAN YEAR.—The  
 2 plan sponsor may specify a new plan year in the  
 3 election under subsection (a) and the plan year  
 4 of the plan may be changed to such new plan  
 5 year without the approval of the Secretary of  
 6 the Treasury.

7 (3) APPLICABLE PLAN YEAR.—The term “ap-  
 8 plicable plan year” means each plan year to which  
 9 the election under subsection (a) applies under para-  
 10 graph (1).

11 (d) MINIMUM REQUIRED CONTRIBUTION.—

12 (1) IN GENERAL.—In the case of any applicable  
 13 plan year during the amortization period, the min-  
 14 imum required contribution shall be the amount nec-  
 15 essary to amortize the unfunded liability of the plan,  
 16 determined as of the first day of the plan year, in  
 17 equal annual installments (until fully amortized)  
 18 over the remainder of the amortization period. Such  
 19 amount shall be separately determined for each ap-  
 20 plicable plan year.

21 (2) YEARS AFTER AMORTIZATION PERIOD.—In  
 22 the case of any plan year beginning after the end of  
 23 the amortization period, section 302(a)(2)(A) of  
 24 such Act and section 412(a)(2)(A) of such Code  
 25 shall apply to such plan, but the prefunding balance



1 as of the first day of the first of such years under  
2 section 303(f) of such Act and section 430(f) of such  
3 Code shall be zero.

4 (3) DEFINITIONS.—For purposes of this  
5 section—

6 (A) UNFUNDED LIABILITY.—The term  
7 “unfunded liability” means the unfunded ac-  
8 crued liability under the plan, determined under  
9 the unit credit funding method.

10 (B) AMORTIZATION PERIOD.—The term  
11 “amortization period” means the 20-plan year  
12 period beginning with the first applicable plan  
13 year.

14 (4) OTHER RULES.—In determining the min-  
15 imum required contribution and amortization  
16 amount under this subsection—

17 (A) the provisions of section 302(c)(3) of  
18 such Act and section 412(c)(3) of such Code, as  
19 in effect before the date of enactment of this  
20 section, shall apply,

21 (B) the rate of interest under section  
22 302(b) of such Act and section 412(b) of such  
23 Code, as so in effect, shall be used for all cal-  
24 culations requiring an interest rate, and

1 (C) the value of plan assets shall be equal  
2 to their fair market value.

3 (5) SPECIAL RULE FOR CERTAIN PLAN SPIN-  
4 OFFS.—For purposes of subsection (a), if, with re-  
5 spect to any eligible plan to which this subsection  
6 applies—

7 (A) any applicable plan year includes the  
8 date of the enactment of this Act,

9 (B) a plan was spun off from the eligible  
10 plan during the plan year but before such date  
11 of enactment,

12 the minimum required contribution under subsection  
13 (a)(1) for the eligible plan for such applicable plan  
14 year shall be determined as if the plans were a sin-  
15 gle plan for that plan year (based on the full 12-  
16 month plan year in effect prior to the spin-off). The  
17 employer shall designate the allocation of the min-  
18 imum required contribution between such plans for  
19 the applicable plan year and direct the appropriate  
20 reallocation between the plans of any contributions  
21 for the applicable plan year.

22 (e) FUNDING STANDARD ACCOUNT AND  
23 PREFUNDING BALANCE.—Any charge or credit in the  
24 funding standard account under section 302 of such Act  
25 or section 412 of such Code, and any prefunding balance

1 under section 303 of such Act or section 430 of such Code,  
 2 as of the day before the first day of the first applicable  
 3 plan year, shall be reduced to zero.

4 (f) AMENDMENTS TO OTHER PROVISIONS.—

5 (1) QUALIFICATION REQUIREMENT.—Section  
 6 401(a)(36) of the Internal Revenue Code of 1986, as  
 7 added by section 402 of this Act, is amended by  
 8 adding at the end the following: “This paragraph  
 9 shall also apply to any plan during any period dur-  
 10 ing which an amortization schedule under section  
 11 403 of the Pension Security and Transparency Act  
 12 of 2005 is in effect.”

13 (2) PBGC LIABILITY LIMITED.—Section 4022  
 14 of the Employee Retirement Income Security Act of  
 15 1974, as amended by this Act, is amended by adding  
 16 at the end the following new subsection:

17 “(h) SPECIAL RULE FOR PLANS ELECTING CERTAIN  
 18 FUNDING REQUIREMENTS.—During any period in which  
 19 an election by a plan under section 403 of the Pension  
 20 Security and Transparency Act of 2005 is in effect, then  
 21 this section and section 4044(a)(3) shall be applied by  
 22 treating the first day of the first applicable plan year as  
 23 the termination date of the plan. This subsection shall not  
 24 apply to any plan for which an election under section  
 25 403(h) of such Act is in effect.”.

1           (3) LIMITATION ON DEDUCTIONS UNDER CER-  
 2           TAIN PLANS.—Section 404(a)(7)(C)(iii) of the Inter-  
 3           nal Revenue Code of 1986, as added by this Act, is  
 4           amended by adding at the end the following new  
 5           sentence: “This clause shall also apply to any plan  
 6           for a plan year if an election under section 403 of  
 7           the Pension Security and Transparency Act of 2005  
 8           is in effect for such year.”

9           (4) NOTICE.—In the case of a plan amendment  
 10          adopted in order to comply with this section, any no-  
 11          tice required under section 204(h) of such Act or  
 12          section 4980F(e) of such Code shall be provided  
 13          within 15 days of the effective date of such plan  
 14          amendment. This subsection shall not apply to any  
 15          plan unless such plan is maintained pursuant to one  
 16          or more collective bargaining agreements between  
 17          employee representatives and 1 or more employers.

18          (g) SPECIAL RULES FOR TERMINATION OF ELIGIBLE  
 19          PLANS.—During any period an election is in effect under  
 20          this section with respect to an eligible plan, the Pension  
 21          Benefit Guaranty Corporation shall, before it seeks or ap-  
 22          proves a termination of such plan under section 4041(c)  
 23          or 4042 of the Employee Retirement Income Security Act  
 24          of 1974—

1           (1) make a determination under section  
 2           4041(c)(4) or 4042(i) of such Act whether the ter-  
 3           mination would be necessary if the Secretary of the  
 4           Treasury were to enter into an agreement under sec-  
 5           tion 4047(a) of such Act which provides an alter-  
 6           native funding agreement to replace the amortiza-  
 7           tion schedule under this section, and

8           (2) if the Corporation determines such an  
 9           agreement would make such termination unneces-  
 10          sary, take all necessary actions to ensure the agree-  
 11          ment is entered into.

12 The Pension Benefit Guaranty Corporation shall make the  
 13 determination under paragraph (1) within 90 days of re-  
 14 ceiving all information needed in connection with a request  
 15 for a termination (or if no such request is made, within  
 16 90 days of consideration of the termination by the Cor-  
 17 poration).

18           (h) CERTAIN BENEFIT ACCRUALS AND INCREASES  
 19 ALLOWED IF ADDITIONAL CONTRIBUTIONS MADE TO  
 20 COVER COSTS.—

21           (1) IN GENERAL.—If an employer elects the ap-  
 22           plication of this subsection—

23                   (A) the requirements of paragraphs (2)  
 24                   and (3) of subsection (b) shall not apply with

1           respect to any eligible plan maintained by the  
2           employer and specified in the election, and

3           (B) the minimum required contribution  
4           under subsection (d) for any plan year with re-  
5           spect to the plan shall be increased by the  
6           amounts described in paragraphs (2) and (3).

7           Any liabilities and assets taken into account under  
8           this subsection shall not be taken into account in de-  
9           termining the unfunded liability of the plan for pur-  
10          poses of subsection (d).

11          (2) CURRENT FUNDING OF ACCRUALS AND IN-  
12          CREASES.—The amount determined under this para-  
13          graph for any plan year is the target normal cost  
14          which would occur under section 303(b) of such Act  
15          and 430(b) of such Code if—

16                (A) any benefit accrual, or benefit increase  
17                taking effect, during the plan year by reason of  
18                this subsection were treated as having been ac-  
19                crued or earned during the plan year, and

20                (B) the plan were treated as if it were in  
21                at-risk status.

22          (3) FUNDING MUST BE MAINTAINED.—The  
23          amount determined under this paragraph for any  
24          plan year is the amount of any increase in the short-  
25          fall amortization charge which would occur under

1 section 303(c) of such Act and 430(c) of such Code  
2 if—

3 (A) the funding target were determined by  
4 only taking into account benefits to which para-  
5 graph (2) applied for preceding plan years,

6 (B) the only assets taken into account  
7 were the contributions required under this para-  
8 graph and paragraph (2) for preceding plan  
9 years (and any earnings thereon),

10 (C) the amortization period included only  
11 the plan year,

12 (D) the transition rule under section  
13 303(c)(4)(B) of such Act and section  
14 430(c)(4)(B) of such Code did not apply, and

15 (E) the plan were treated as if it were in  
16 at-risk status.

17 (4) SPECIAL RULES FOR YEARS BEFORE 2007.—

18 Notwithstanding any other provision of this Act, in  
19 the case of an applicable plan year of an eligible  
20 plan to which this subsection applies which begins  
21 before January 1, 2007, in determining the amounts  
22 described in paragraphs (2) and (3) for such plan  
23 year—

1 (A) the provisions of, and amendments  
 2 made by, sections 101, 102, 111, and 112 shall  
 3 apply to such plan year, except that

4 (B) the interest rate used under section  
 5 303 of such Act and section 430 of such Code  
 6 for purposes of applying paragraphs (2) and (3)  
 7 to such plan year shall be the interest rate de-  
 8 termined under section 302(b)(5) of such Act  
 9 and section 412(b)(5) of such Code, as in effect  
 10 for plan years beginning in 2005.

11 (5) ELECTION OUT OF SECTION.—An employer  
 12 maintaining an eligible plan to which this subsection  
 13 applies may make a one-time election with respect to  
 14 any applicable plan year not to have this section  
 15 apply to such plan year and all subsequent plan  
 16 years. Subject to subsection (d)(2), the minimum re-  
 17 quired contribution under section 303 of such Act  
 18 and 430 of such Code for all such plan years shall  
 19 be determined without regard to this section.

20 (i) EXCLUSION OF CERTAIN EMPLOYEES FROM MIN-  
 21 IMUM COVERAGE REQUIREMENTS.—

22 (1) IN GENERAL.—Section 410(b)(3) of such  
 23 Code is amended by striking the last sentence and  
 24 inserting the following: “For purposes of subpara-  
 25 graph (B), management pilots who are not rep-



1       resented in accordance with title II of the Railway  
2       Labor Act shall be treated as covered by a collective  
3       bargaining agreement described in such subpara-  
4       graph if the management pilots manage the flight  
5       operations of air pilots who are so represented and  
6       the management pilots are, pursuant to the terms of  
7       the agreement, included in the group of employees  
8       benefitting under the trust described in such sub-  
9       paragraph. Subparagraph (B) shall not apply in the  
10      case of a plan which provides contributions or bene-  
11      fits for employees whose principal duties are not cus-  
12      tomarily performed aboard an aircraft in flight  
13      (other than management pilots described in the pre-  
14      ceding sentence).”

15           (2) EFFECTIVE DATE.—The amendment made  
16      by this subsection shall apply to years beginning be-  
17      fore, on, or after the date of the enactment of this  
18      Act.

19           (j) EFFECTIVE DATE.—Except as otherwise provided  
20      in this section, the amendments made by this section shall  
21      apply to plan years ending after the date of the enactment  
22      of this Act.

1 **SEC. 404. LIMITATION ON PBGC GUARANTEE OF SHUT-**  
 2 **DOWN AND OTHER BENEFITS.**

3 (a) IN GENERAL.—Section 4022(b) of the Employee  
 4 Retirement Income Security Act of 1974 (29 U.S.C.  
 5 1322(b)) is amended by adding at the end the following:

6 “(8) If a benefit is payable by reason of—

7 “(A) a plant shutdown or similar event; or

8 “(B) any event other than attainment of  
 9 any age, performance of any service, receipt or  
 10 derivation of any compensation, or the occur-  
 11 rence of death or disability,

12 this section shall be applied as if a plan amendment  
 13 had been adopted on the date such event occurred  
 14 that provides for the payment of such benefit.”.

15 (b) EFFECTIVE DATE.—The amendment made by  
 16 this section shall apply to benefits that become payable  
 17 as a result of a plant shutdown or other similar event,  
 18 as such terms are used in the amendment made by sub-  
 19 section (a), that occurs after July 26, 2005.

20 **SEC. 405. RULES RELATING TO BANKRUPTCY OF EM-**  
 21 **PLOYER.**

22 (a) GUARANTEE.—Section 4022 of the Employee Re-  
 23 tirement Income Security Act of 1974 (29 U.S.C. 1322),  
 24 as amended by this Act, is amended by adding at the end  
 25 the following:

1       “(i) BANKRUPTCY FILING SUBSTITUTED FOR TER-  
 2 MINATION DATE.—If a contributing sponsor of a plan has  
 3 filed or has had filed against such person a petition seek-  
 4 ing liquidation or reorganization in a case under title 11,  
 5 United States Code, or under any similar Federal law or  
 6 law of a State or political subdivision, and the case has  
 7 not been dismissed as of the termination date, then this  
 8 section shall be applied by treating the date such petition  
 9 was filed as the termination date of the plan.”.

10       (b) ALLOCATION OF ASSETS AMONG PRIORITY  
 11 GROUPS IN BANKRUPTCY PROCEEDINGS.—Section 4044  
 12 of the Employee Retirement Income Security Act of 1974  
 13 (29 U.S.C. 1344) is amended by adding at the end the  
 14 following:

15       “(e) BANKRUPTCY FILING SUBSTITUTED FOR TER-  
 16 MINATION DATE.—If a contributing sponsor of a plan has  
 17 filed or has had filed against such person a petition seek-  
 18 ing liquidation or reorganization in a case under title 11,  
 19 United States Code, or under any similar Federal law or  
 20 law of a State or political subdivision, and the case has  
 21 not been dismissed as of the termination date, then sub-  
 22 section (a)(3) shall be applied by treating the date such  
 23 petition was filed as the termination date of the plan.”.

24       (c) EFFECTIVE DATE.—The amendments made this  
 25 section shall apply with respect to proceedings initiated

1 under title 11, United States Code, or under any similar  
 2 Federal law or law of a State or political subdivision, on  
 3 or after the date that is 30 days after the date of enact-  
 4 ment of this Act.

5 **SEC. 406. PBGC PREMIUMS FOR NEW PLANS OF SMALL EM-**  
 6 **LOYERS.**

7 (a) IN GENERAL.—Subparagraph (A) of section  
 8 4006(a)(3) of the Employee Retirement Income Security  
 9 Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended—

10 (1) in clause (i), by inserting “other than a new  
 11 single-employer plan (as defined in subparagraph  
 12 (F)) maintained by a small employer (as so de-  
 13 fined),” after “single-employer plan,”

14 (2) in clause (iii), by striking the period at the  
 15 end and inserting “, and”, and

16 (3) by adding at the end the following new  
 17 clause:

18 “(v) in the case of a new single-employer plan  
 19 (as defined in subparagraph (F)) maintained by a  
 20 small employer (as so defined) for the plan year, \$5  
 21 for each individual who is a participant in such plan  
 22 during the plan year.”

23 (b) DEFINITION OF NEW SINGLE-EMPLOYER  
 24 PLAN.—Section 4006(a)(3) of the Employee Retirement  
 25 Income Security Act of 1974 (29 U.S.C. 1306(a)(3)) is

1 amended by adding at the end the following new subpara-  
2 graph:

3       “(F)(i) For purposes of this paragraph, a single-em-  
4 ployer plan maintained by a contributing sponsor shall be  
5 treated as a new single-employer plan for each of its first  
6 5 plan years if, during the 36-month period ending on the  
7 date of the adoption of such plan, the sponsor or any  
8 member of such sponsor’s controlled group (or any prede-  
9 cessor of either) did not establish or maintain a plan to  
10 which this title applies with respect to which benefits were  
11 accrued for substantially the same employees as are in the  
12 new single-employer plan.

13       “(ii)(I) For purposes of this paragraph, the term  
14 ‘small employer’ means an employer which on the first day  
15 of any plan year has, in aggregation with all members of  
16 the controlled group of such employer, 100 or fewer em-  
17 ployees.

18       “(II) In the case of a plan maintained by two or more  
19 contributing sponsors that are not part of the same con-  
20 trolled group, the employees of all contributing sponsors  
21 and controlled groups of such sponsors shall be aggregated  
22 for purposes of determining whether any contributing  
23 sponsor is a small employer.”

1 (c) EFFECTIVE DATE.—The amendments made by  
 2 this section shall apply to plans first effective after Decem-  
 3 ber 31, 2005.

4 **SEC. 407. PBGC PREMIUMS FOR SMALL AND NEW PLANS.**

5 (a) NEW PLANS.—Subparagraph (E) of section  
 6 4006(a)(3) of the Employee Retirement Income Security  
 7 Act of 1974 (29 U.S.C. 1306(a)(3)), as amended by this  
 8 Act, is amended by adding at the end the following new  
 9 clause:

10 “(iv) In the case of a new defined benefit plan, the  
 11 amount determined under clause (ii) for any plan year  
 12 shall be an amount equal to the product of the amount  
 13 determined under clause (ii) and the applicable percent-  
 14 age. For purposes of this clause, the term ‘applicable per-  
 15 centage’ means—

16 “(I) 0 percent, for the first plan year.

17 “(II) 20 percent, for the second plan year.

18 “(III) 40 percent, for the third plan year.

19 “(IV) 60 percent, for the fourth plan year.

20 “(V) 80 percent, for the fifth plan year.

21 For purposes of this clause, a defined benefit plan (as de-  
 22 fined in section 3(35)) maintained by a contributing spon-  
 23 sor shall be treated as a new defined benefit plan for each  
 24 of its first 5 plan years if, during the 36-month period  
 25 ending on the date of the adoption of the plan, the sponsor

1 and each member of any controlled group including the  
 2 sponsor (or any predecessor of either) did not establish  
 3 or maintain a plan to which this title applies with respect  
 4 to which benefits were accrued for substantially the same  
 5 employees as are in the new plan.”

6 (b) SMALL PLANS.—Paragraph (3) of section  
 7 4006(a) of the Employee Retirement Income Security Act  
 8 of 1974 (29 U.S.C. 1306(a)), is amended—

9 (1) by striking “The” in subparagraph (E)(i)  
 10 and inserting “Except as provided in subparagraph  
 11 (G), the”, and

12 (2) by inserting after subparagraph (F) the fol-  
 13 lowing new subparagraph:

14 “(G)(i) In the case of an employer who has 25 or  
 15 fewer employees on the first day of the plan year, the addi-  
 16 tional premium determined under subparagraph (E) for  
 17 each participant shall not exceed \$5 multiplied by the  
 18 number of participants in the plan as of the close of the  
 19 preceding plan year.

20 “(ii) For purposes of clause (i), whether an employer  
 21 has 25 or fewer employees on the first day of the plan  
 22 year is determined by taking into consideration all of the  
 23 employees of all members of the contributing sponsor’s  
 24 controlled group. In the case of a plan maintained by two  
 25 or more contributing sponsors, the employees of all con-

1 tributing sponsors and their controlled groups shall be ag-  
 2 gregated for purposes of determining whether the 25-or-  
 3 fewer-employees limitation has been satisfied.”

4 (c) EFFECTIVE DATES.—

5 (1) SUBSECTION (a).—The amendments made  
 6 by subsection (a) shall apply to plans first effective  
 7 after December 31, 2005.

8 (2) SUBSECTION (b).—The amendments made  
 9 by subsection (b) shall apply to plan years beginning  
 10 after December 31, 2005.

11 **SEC. 408. AUTHORIZATION FOR PBGC TO PAY INTEREST ON**  
 12 **PREMIUM OVERPAYMENT REFUNDS.**

13 (a) IN GENERAL.—Section 4007(b) of the Employ-  
 14 ment Retirement Income Security Act of 1974 (29 U.S.C.  
 15 1307(b)) is amended—

16 (1) by striking “(b)” and inserting “(b)(1)”,  
 17 and

18 (2) by inserting at the end the following new  
 19 paragraph:

20 “(2) The corporation is authorized to pay, subject to  
 21 regulations prescribed by the corporation, interest on the  
 22 amount of any overpayment of premium refunded to a des-  
 23 ignated payor. Interest under this paragraph shall be cal-  
 24 culated at the same rate and in the same manner as inter-  
 25 est is calculated for underpayments under paragraph (1).”



1 (b) EFFECTIVE DATE.—The amendments made by  
 2 subsection (a) shall apply to interest accruing for periods  
 3 beginning not earlier than the date of the enactment of  
 4 this Act.

5 **SEC. 409. RULES FOR SUBSTANTIAL OWNER BENEFITS IN**  
 6 **TERMINATED PLANS.**

7 (a) MODIFICATION OF PHASE-IN OF GUARANTEE.—  
 8 Section 4022(b)(5) of the Employee Retirement Income  
 9 Security Act of 1974 (29 U.S.C. 1322(b)(5)) is amended  
 10 to read as follows:

11 “(5)(A) For purposes of this paragraph, the term  
 12 ‘majority owner’ means an individual who, at any time  
 13 during the 60-month period ending on the date the deter-  
 14 mination is being made—

15 “(i) owns the entire interest in an unincor-  
 16 porated trade or business,

17 “(ii) in the case of a partnership, is a partner  
 18 who owns, directly or indirectly, 50 percent or more  
 19 of either the capital interest or the profits interest  
 20 in such partnership, or

21 “(iii) in the case of a corporation, owns, directly  
 22 or indirectly, 50 percent or more in value of either  
 23 the voting stock of that corporation or all the stock  
 24 of that corporation.

1 For purposes of clause (iii), the constructive ownership  
 2 rules of section 1563(e) of the Internal Revenue Code of  
 3 1986 (other than paragraph (3)(C) thereof) shall apply,  
 4 including the application of such rules under section  
 5 414(c) of such Code.

6 “(B) In the case of a participant who is a majority  
 7 owner, the amount of benefits guaranteed under this sec-  
 8 tion shall equal the product of—

9 “(i) a fraction (not to exceed 1) the numerator  
 10 of which is the number of years from the later of the  
 11 effective date or the adoption date of the plan to the  
 12 termination date, and the denominator of which is  
 13 10, and

14 “(ii) the amount of benefits that would be guar-  
 15 anteed under this section if the participant were not  
 16 a majority owner.”

17 (b) MODIFICATION OF ALLOCATION OF ASSETS.—

18 (1) Section 4044(a)(4)(B) of the Employee Re-  
 19 tirement Income Security Act of 1974 (29 U.S.C.  
 20 1344(a)(4)(B)) is amended by striking “section  
 21 4022(b)(5)” and inserting “section 4022(b)(5)(B)”.

22 (2) Section 4044(b) of such Act (29 U.S.C.  
 23 1344(b)) is amended—

24 (A) by striking “(5)” in paragraph (2) and  
 25 inserting “(4), (5),” and

1 (B) by redesignating paragraphs (3)  
 2 through (6) as paragraphs (4) through (7), re-  
 3 spectively, and by inserting after paragraph (2)  
 4 the following new paragraph:

5 “(3) If assets available for allocation under  
 6 paragraph (4) of subsection (a) are insufficient to  
 7 satisfy in full the benefits of all individuals who are  
 8 described in that paragraph, the assets shall be allo-  
 9 cated first to benefits described in subparagraph (A)  
 10 of that paragraph. Any remaining assets shall then  
 11 be allocated to benefits described in subparagraph  
 12 (B) of that paragraph. If assets allocated to such  
 13 subparagraph (B) are insufficient to satisfy in full  
 14 the benefits described in that subparagraph, the as-  
 15 sets shall be allocated pro rata among individuals on  
 16 the basis of the present value (as of the termination  
 17 date) of their respective benefits described in that  
 18 subparagraph.”

19 (c) CONFORMING AMENDMENTS.—

20 (1) Section 4021 of the Employee Retirement  
 21 Income Security Act of 1974 (29 U.S.C. 1321) is  
 22 amended—

23 (A) in subsection (b)(9), by striking “as  
 24 defined in section 4022(b)(6)”, and

1 (B) by adding at the end the following new  
 2 subsection:

3 “(d) For purposes of subsection (b)(9), the term ‘sub-  
 4 stantial owner’ means an individual who, at any time dur-  
 5 ing the 60-month period ending on the date the determina-  
 6 tion is being made—

7 “(1) owns the entire interest in an unincor-  
 8 porated trade or business,

9 “(2) in the case of a partnership, is a partner  
 10 who owns, directly or indirectly, more than 10 per-  
 11 cent of either the capital interest or the profits inter-  
 12 est in such partnership, or

13 “(3) in the case of a corporation, owns, directly  
 14 or indirectly, more than 10 percent in value of either  
 15 the voting stock of that corporation or all the stock  
 16 of that corporation.

17 For purposes of paragraph (3), the constructive ownership  
 18 rules of section 1563(e) of the Internal Revenue Code of  
 19 1986 (other than paragraph (3)(C) thereof) shall apply,  
 20 including the application of such rules under section  
 21 414(c) of such Code.”

22 (2) Section 4043(c)(7) of such Act (29 U.S.C.  
 23 1343(c)(7)) is amended by striking “section  
 24 4022(b)(6)” and inserting “section 4021(d)”.

25 (d) EFFECTIVE DATES.—

1 (1) IN GENERAL.—Except as provided in para-  
 2 graph (2), the amendments made by this section  
 3 shall apply to plan terminations—

4 (A) under section 4041(c) of the Employee  
 5 Retirement Income Security Act of 1974 (29  
 6 U.S.C. 1341(c)) with respect to which notices  
 7 of intent to terminate are provided under sec-  
 8 tion 4041(a)(2) of such Act (29 U.S.C.  
 9 1341(a)(2)) after December 31, 2005, and

10 (B) under section 4042 of such Act (29  
 11 U.S.C. 1342) with respect to which proceedings  
 12 are instituted by the corporation after such  
 13 date.

14 (2) CONFORMING AMENDMENTS.—The amend-  
 15 ments made by subsection (c) shall take effect on  
 16 January 1, 2006.

17 **SEC. 410. ACCELERATION OF PBGC COMPUTATION OF BEN-**  
 18 **EFITS ATTRIBUTABLE TO RECOVERIES FROM**  
 19 **EMPLOYERS.**

20 (a) MODIFICATION OF AVERAGE RECOVERY PER-  
 21 CENTAGE OF OUTSTANDING AMOUNT OF BENEFIT LI-  
 22 ABILITIES PAYABLE BY CORPORATION TO PARTICIPANTS  
 23 AND BENEFICIARIES.—Section 4022(c)(3)(B)(ii) of the  
 24 Employee Retirement Income Security Act of 1974 (29  
 25 U.S.C. 1322(c)(3)(B)(ii)) is amended to read as follows:

1                   “(ii) notices of intent to terminate  
 2                   were provided (or in the case of a termi-  
 3                   nation by the corporation, a notice of de-  
 4                   termination under section 4042 was  
 5                   issued) during the 5-Federal fiscal year pe-  
 6                   riod ending with the third fiscal year pre-  
 7                   ceding the fiscal year in which occurs the  
 8                   date of the notice of intent to terminate  
 9                   (or the notice of determination under sec-  
 10                  tion 4042) with respect to the plan termi-  
 11                  nation for which the recovery ratio is being  
 12                  determined.”

13           (b) VALUATION OF SECTION 4062(c) LIABILITY FOR  
 14 DETERMINING AMOUNTS PAYABLE BY CORPORATION TO  
 15 PARTICIPANTS AND BENEFICIARIES.—

16           (1) SINGLE-EMPLOYER PLAN BENEFITS GUAR-  
 17 ANTEED.—Section 4022(c)(3)(A) of the Employee  
 18 Retirement Income Security Act of 1974 (29 U.S.C.  
 19 13) is amended to read as follows:

20                   “(A) IN GENERAL.—Except as provided in  
 21                   subparagraph (C), the term ‘recovery ratio’  
 22                   means the ratio which—

23                   “(i) the sum of the values of all recov-  
 24                   eries under section 4062, 4063, or 4064,  
 25                   determined by the corporation in connec-

1                   tion with plan terminations described  
 2                   under subparagraph (B), bears to  
 3                   “(ii) the sum of all unfunded benefit  
 4                   liabilities under such plans as of the termi-  
 5                   nation date in connection with any such  
 6                   prior termination.”.

7                   (2) ALLOCATION OF ASSETS.—Section 4044 of  
 8                   the Employee Retirement Income Security Act of  
 9                   1974 (29 U.S.C. 1362) is amended by adding at the  
 10                  end the following new subsection:

11               “(e) VALUATION OF SECTION 4062(c) LIABILITY FOR  
 12               DETERMINING AMOUNTS PAYABLE BY CORPORATION TO  
 13               PARTICIPANTS AND BENEFICIARIES.—

14               “(1) IN GENERAL.—In the case of a terminated  
 15               plan, the value of the recovery of liability under sec-  
 16               tion 4062(c) allocable as a plan asset under this sec-  
 17               tion for purposes of determining the amount of ben-  
 18               efits payable by the corporation shall be determined  
 19               by multiplying—

20               “(A) the amount of liability under section  
 21               4062(c) as of the termination date of the plan,  
 22               by

23               “(B) the applicable section 4062(c) recov-  
 24               ery ratio.

1           “(2) SECTION 4062(c) RECOVERY RATIO.—For  
2           purposes of this subsection—

3                   “(A) IN GENERAL.—Except as provided in  
4                   subparagraph (C), the term ‘section 4062(c) re-  
5                   covery ratio’ means the ratio which—

6                           “(i) the sum of the values of all recov-  
7                           eries under section 4062(c) determined by  
8                           the corporation in connection with plan  
9                           terminations described under subparagraph  
10                          (B), bears to

11                           “(ii) the sum of all the amounts of li-  
12                           ability under section 4062(c) with respect  
13                           to such plans as of the termination date in  
14                           connection with any such prior termi-  
15                           nation.

16                   “(B) PRIOR TERMINATIONS.—A plan ter-  
17                   mination described in this subparagraph is a  
18                   termination with respect to which—

19                           “(i) the value of recoveries under sec-  
20                           tion 4062(c) have been determined by the  
21                           corporation, and

22                           “(ii) notices of intent to terminate  
23                           were provided (or in the case of a termi-  
24                           nation by the corporation, a notice of de-  
25                           termination under section 4042 was



1           issued) during the 5-Federal fiscal year pe-  
2           riod ending with the third fiscal year pre-  
3           ceding the fiscal year in which occurs the  
4           date of the notice of intent to terminate  
5           (or the notice of determination under sec-  
6           tion 4042) with respect to the plan termi-  
7           nation for which the recovery ratio is being  
8           determined.

9           “(C) EXCEPTION.—In the case of a termi-  
10          nated plan with respect to which the out-  
11          standing amount of benefit liabilities exceeds  
12          \$20,000,000, the term ‘section 4062(c) recovery  
13          ratio’ means, with respect to the termination of  
14          such plan, the ratio of—

15               “(i) the value of the recoveries on be-  
16               half of the plan under section 4062(c), to

17               “(ii) the amount of the liability owed  
18               under section 4062(c) as of the date of  
19               plan termination to the trustee appointed  
20               under section 4042 (b) or (c).

21          “(3) SUBSECTION NOT TO APPLY.—This sub-  
22          section shall not apply with respect to the deter-  
23          mination of—

24               “(A) whether the amount of outstanding  
25               benefit liabilities exceeds \$20,000,000, or

1           “(B) the amount of any liability under sec-  
 2           tion 4062 to the corporation or the trustee ap-  
 3           pointed under section 4042 (b) or (c).

4           “(4) DETERMINATIONS.—Determinations under  
 5           this subsection shall be made by the corporation.  
 6           Such determinations shall be binding unless shown  
 7           by clear and convincing evidence to be unreason-  
 8           able.”

9           (c) EFFECTIVE DATE.—The amendments made by  
 10          this section shall apply for any termination for which no-  
 11          tices of intent to terminate are provided (or in the case  
 12          of a termination by the corporation, a notice of determina-  
 13          tion under section 4042 under the Employee Retirement  
 14          Income Security Act of 1974 is issued) on or after the  
 15          date which is 30 days after the date of enactment of this  
 16          section.

17       **SEC. 411. TREATMENT OF CERTAIN PLANS WHERE CES-**  
 18                               **SATION OR CHANGE IN MEMBERSHIP OF A**  
 19                               **CONTROLLED GROUP.**

20          (a) IN GENERAL.—Section 4041(b) of the Employee  
 21          Retirement Income Security Act of 1974 (29 U.S.C.  
 22          1341(b)) is amended by adding at the end the following  
 23          new paragraph:

1           “(5) SPECIAL RULE FOR CERTAIN PLANS  
2 WHERE CESSATION OR CHANGE IN MEMBERSHIP OF  
3 A CONTROLLED GROUP.—

4           “(A) IN GENERAL.—Except as provided in  
5 subparagraph (B), if—

6           “(i) there is transaction or series of  
7 transactions which result in a single-em-  
8 ployer plan which is a defined benefit plan  
9 being maintained by an employer which is  
10 not a member of the same controlled group  
11 of which the employer maintaining the  
12 plan before such transaction or series of  
13 transactions was a member,

14           “(ii) the corporation treats the trans-  
15 action or series of transactions as resulting  
16 in a standard termination to which this  
17 subsection applies, and

18           “(iii) the plan is fully funded,  
19 then the interest rate used in determining  
20 whether the plan is sufficient for benefit liabil-  
21 ities for purposes of this subsection shall be the  
22 interest rate used in determining whether the  
23 plan is fully funded.

1           “(B) LIMITATIONS.—Subparagraph (A)  
2 shall not apply to any transaction or series of  
3 transactions unless—

4           “(i) any employer maintaining the  
5 plan immediately before or after such  
6 transaction or series of transactions—

7           “(I) has an outstanding senior  
8 unsecured debt instrument which is  
9 rated investment grade by each of the  
10 nationally recognized statistical rating  
11 organizations for corporate bonds that  
12 has issued a credit rating for such in-  
13 strument, or

14           “(II) if no such debt instrument  
15 of such employer has been rated by  
16 such an organization but 1 or more of  
17 such organizations has made an issuer  
18 credit rating for such employer, all  
19 such organizations which have so  
20 rated the employer have rated such  
21 employer investment grade, and

22           “(ii) the employer maintaining the  
23 plan after the transaction or series of  
24 transactions employs at least 30 percent of  
25 the employees located in the United States

1           who were employed by such employer im-  
2           mediately before the transaction or series  
3           of transactions.

4           “(C) FULLY FUNDED.—For purposes of  
5           subparagraph (A), a plan shall be treated as  
6           fully funded with respect to any transaction or  
7           series of transactions if—

8                   “(i) in the case of a transaction or se-  
9                   ries of transactions which occur in a plan  
10                  year beginning before January 1, 2007,  
11                  the funded current liability percentage de-  
12                  termined under section 302(d) for the plan  
13                  year is at least 100 percent, and

14                  “(ii) in the case of a transaction or  
15                  series of transactions which occur in a plan  
16                  year beginning on or after such date, the  
17                  funding target attainment percentage de-  
18                  termined under section 303 is, as of the  
19                  valuation date for such plan year, at least  
20                  100 percent.”

21       (b) EFFECTIVE DATE.—The amendments made by  
22       this section shall apply to any transaction or series of  
23       transactions occurring on and after the date of the enact-  
24       ment of this Act.

1 **SEC. 412. EFFECT OF TITLE.**

2 The decreases in Federal outlays resulting from the  
3 enactment of this title, and the amendments made by this  
4 title, shall be treated as in lieu of the decreases in Federal  
5 outlays which—

6 (1) resulted from amendments made to title IV  
7 of the Employee Retirement Income Security Act of  
8 1974 (29 U.S.C. 1301 et seq.); and

9 (2) were contained in an Act enacted pursuant  
10 to the concurrent resolution on the budget for fiscal  
11 year 2006.

12 **SEC. 413. AGE REQUIREMENT FOR EMPLOYERS.**

13 (a) SINGLE-EMPLOYER PLAN BENEFITS GUARAN-  
14 TEED.—Section 4022(b) of the Employee Retirement In-  
15 come Security Act of 1974 (29 U.S.C. 1322(b)) is amend-  
16 ed in the flush matter following paragraph (3), by adding  
17 at the end the following: “If, at the time of termination  
18 of a plan under this title, regulations prescribed by the  
19 Federal Aviation Administration require an individual to  
20 separate from service as a commercial airline pilot after  
21 attaining any age before age 65, paragraph (3) shall be  
22 applied to an individual who is a participant in the plan  
23 by reason of such service by substituting such age for age  
24 65.”.

25 (b) MULTIEMPLOYER PLAN BENEFITS GUARAN-  
26 TEED.—Section 4022B(a) of the Employee Retirement In-

1 come Security Act of 1974 (29 U.S.C. 1322b(a)) is  
 2 amended by adding at the end the following: “If, at the  
 3 time of termination of a plan under this title, regulations  
 4 prescribed by the Federal Aviation Administration require  
 5 an individual to separate from service as a commercial air-  
 6 line pilot after attaining any age before age 65, this sub-  
 7 section shall be applied to an individual who is a partici-  
 8 pant in the plan by reason of such service by substituting  
 9 such age for age 65.”.

10 (c) EFFECTIVE DATE.—The amendments made by  
 11 this section shall apply to benefits payable on or after the  
 12 date of enactment of this Act.

## 13 **TITLE V—DISCLOSURE**

### 14 **SEC. 501. DEFINED BENEFIT PLAN FUNDING NOTICE.**

15 (a) IN GENERAL.—Section 101(f) of the Employee  
 16 Retirement Income Security Act of 1974 (29 U.S.C.  
 17 1021(f)) is amended to read as follows:

18 “(f) DEFINED BENEFIT PLAN FUNDING NOTICES.—

19 “(1) IN GENERAL.—The administrator of a de-  
 20 fined benefit plan shall for each plan year provide a  
 21 plan funding notice to the Pension Benefit Guaranty  
 22 Corporation, to each plan participant and bene-  
 23 ficiary, to each labor organization representing such  
 24 participants or beneficiaries, and, in the case of a

multiemployer plan, to each employer that has an obligation to contribute to the plan.

“(2) INFORMATION CONTAINED IN NOTICES.—

“(A) IDENTIFYING INFORMATION.—Each notice required under paragraph (1) shall contain identifying information, including the name of the plan, the address and phone number of the plan administrator and the plan’s principal administrative officer, each plan sponsor’s employer identification number, and the plan number of the plan.

“(B) SPECIFIC INFORMATION.—A plan funding notice under paragraph (1) shall include—

“(i)(I) in the case of a single-employer plan, a statement as to whether the plan’s funding target attainment percentage (as defined in section 303(d)(2)) for the plan year to which the notice relates, and for the 2 preceding plan years, is at least 100 percent (and, if not, the actual percentages), or

“(II) in the case of a multiemployer plan, a statement as to whether the plan’s funded percentage (as defined in section



1           305(i)) for the plan year to which the no-  
2           tice relates, and for the 2 preceding plan  
3           years, is at least 100 percent (and, if not,  
4           the actual percentages),

5           “(ii)(I) in the case of a single-em-  
6           ployer plan, a statement of the value of the  
7           plan’s assets and liabilities for the plan  
8           year to which the notice relates as of the  
9           last day of the plan year to which the no-  
10          tice relates determined using the asset  
11          valuation under subclause (I) of section  
12          4006(a)(3)(E)(iii) and the interest rate  
13          under subclause (II) of such section, and

14          “(II) in the case of a multiemployer  
15          plan, a statement of the value of the plan’s  
16          assets and liabilities for the plan year to  
17          which the notice relates as the last day of  
18          such plan year,

19          “(iii) a statement of the number of  
20          participants who are—

21                  “(I) retired or separated from  
22                  service and are receiving benefits,

23                  “(II) retired or separated partici-  
24                  pants entitled to future benefits, and

1                   “(II) active participants under  
2                   the plan,

3                   “(iv) a statement setting forth the  
4                   funding policy of the plan and the asset al-  
5                   location of investments under the plan (ex-  
6                   pressed as percentages of total assets) as  
7                   of the end of the plan year to which the  
8                   notice relates,

9                   “(v) in the case of a multiemployer  
10                  plan, whether the plan was in critical or  
11                  endangered status under section 305 for  
12                  such plan year and, if so—

13                  “(I) a list of the actions taken by  
14                  the plan to improve its funding status,  
15                  and

16                  “(II) a statement describing how  
17                  a person may obtain a copy of the  
18                  plan’s improvement or rehabilitation  
19                  plan, as appropriate, adopted under  
20                  section 305 and the actuarial and fi-  
21                  nancial data that demonstrate any ac-  
22                  tion taken by the plan toward fiscal  
23                  improvement,

24                  “(vi) a summary of any funding im-  
25                  provement plan, rehabilitation plan, or

1 modification thereof adopted under section  
2 305 during the plan year to which the no-  
3 tice relates,

4 “(vii) in the case of any plan amend-  
5 ments, scheduled benefit increase or reduc-  
6 tion, or other known event taking effect in  
7 the current plan year and having a mate-  
8 rial effect on plan liabilities or assets for  
9 the year (as defined in regulations by the  
10 Secretary), an explanation of the amend-  
11 ment, schedule increase or reduction, or  
12 event, and a projection to the end of such  
13 plan year of the effect of the amendment,  
14 scheduled increase or reduction, or event  
15 on plan liabilities,

16 “(viii)(I) in the case of a single-em-  
17 ployer plan, a summary of the rules gov-  
18 erning termination of single-employer plans  
19 under subtitle C of title IV, or

20 “(II) in the case of a multiemployer  
21 plan, a summary of the rules governing re-  
22 organization or insolvency, including the  
23 limitations on benefit payments and any  
24 potential benefit reductions and suspen-  
25 sions (and the potential effects of such lim-

1            itations, reductions, and suspensions on  
2            the plan), and

3            “(ix) a general description of the ben-  
4            efits under the plan which are eligible to be  
5            guaranteed by the Pension Benefit Guar-  
6            anty Corporation, along with an expla-  
7            nation of the limitations on the guarantee  
8            and the circumstances under which such  
9            limitations apply.

10           “(C) OTHER INFORMATION.—Each notice  
11           under paragraph (1) shall include—

12           “(i) in the case of a multiemployer  
13           plan, a statement that the plan adminis-  
14           trator shall provide, upon written request,  
15           to any labor organization representing plan  
16           participants and beneficiaries and any em-  
17           ployer that has an obligation to contribute  
18           to the plan, a copy of the annual report  
19           filed with the Secretary under section  
20           104(a), and

21           “(ii) any additional information which  
22           the plan administrator elects to include to  
23           the extent not inconsistent with regulations  
24           prescribed by the Secretary.

25           “(3) TIME FOR PROVIDING NOTICE.—

1           “(A) IN GENERAL.—Any notice under  
2           paragraph (1) shall be provided not later than  
3           90 days after the end of the plan year to which  
4           the notice relates.

5           “(B) EXCEPTION FOR SMALL PLANS.—In  
6           the case of a small plan (as such term is used  
7           under section 303(g)(2)(B)) any notice under  
8           paragraph (1) shall be provided upon filing of  
9           the annual report under section 104(a).

10          “(4) FORM AND MANNER.—Any notice under  
11          paragraph (1)—

12               “(A) shall be provided in a form and man-  
13               ner prescribed in regulations of the Secretary,

14               “(B) shall be written in a manner so as to  
15               be understood by the average plan participant,  
16               and

17               “(C) may be provided in written, elec-  
18               tronic, or other appropriate form to the extent  
19               such form is reasonably accessible to persons to  
20               whom the notice is required to be provided.”.

21          (b) MODEL NOTICE.—Not later than 180 days after  
22          the date of the enactment of this Act, the Secretary of  
23          Labor shall publish a model version of the notice required  
24          by section 101(f) of the Employee Retirement Income Se-  
25          curity Act of 1974. The Secretary of Labor may promul-

1 gate any interim final rules as the Secretary determines  
 2 appropriate to carry out the provisions of this subsection.

3 (c) EFFECTIVE DATE.—The amendments made by  
 4 this section shall apply to plan years beginning after De-  
 5 cember 31, 2005.

6 **SEC. 502. ACCESS TO MULTIEMPLOYER PENSION PLAN IN-**  
 7 **FORMATION.**

8 (a) FINANCIAL INFORMATION WITH RESPECT TO  
 9 MULTIEMPLOYER PLANS.—

10 (1) IN GENERAL.—Section 101 of the Employee  
 11 Retirement Income Security Act of 1974 (29 U.S.C.  
 12 1021) is amended—

13 (A) by redesignating subsection (k) as sub-  
 14 section (l); and

15 (B) by inserting after subsection (j) the  
 16 following new subsection:

17 “(k) MULTIEMPLOYER PLAN INFORMATION MADE  
 18 AVAILABLE ON REQUEST.—

19 “(1) IN GENERAL.—Each administrator of a  
 20 multiemployer plan shall, upon written request, fur-  
 21 nish to any plan participant or beneficiary, employee  
 22 representative, or any employer that has an obliga-  
 23 tion to contribute to the plan—

24 “(A) a copy of any periodic actuarial re-  
 25 port (including sensitivity testing) received by

1 the plan for any plan year which has been in  
 2 the plan's possession for at least 30 days, and

3 “(B)(i) a copy of any quarterly, semi-an-  
 4 nual, or annual financial report prepared for  
 5 the plan by any plan investment manager or ad-  
 6 visor or other fiduciary which has been in the  
 7 plan's possession for at least 30 days, or

8 “(ii) at the discretion of the person sub-  
 9 mitting the written request, a copy of a quar-  
 10 terly summary of the financial reports described  
 11 clause (i).

12 “(2) COMPLIANCE.—Information required to be  
 13 provided under paragraph (1) —

14 “(A) shall be provided to the requesting  
 15 participant, beneficiary, or employer within 30  
 16 days after the request in a form and manner  
 17 prescribed in regulations of the Secretary,

18 “(B) may be provided in written, elec-  
 19 tronic, or other appropriate form to the extent  
 20 such form is reasonably accessible to persons to  
 21 whom the information is required to be pro-  
 22 vided, and

23 “(C) shall not—

24 “(i) include any individually identifi-  
 25 able information regarding any plan partic-

1           ipant, beneficiary, employee, fiduciary, or  
 2           contributing employer, or

3           “(ii) reveal any proprietary informa-  
 4           tion regarding the plan, any contributing  
 5           employer, or entity providing services to  
 6           the plan.

7           “(3) LIMITATIONS.—In no case shall a partici-  
 8           pant, beneficiary, or employer be entitled under this  
 9           subsection to receive more than one copy of any re-  
 10          port described in paragraph (1) during any one 12-  
 11          month period. The administrator may make a rea-  
 12          sonable charge to cover copying, mailing, and other  
 13          costs of furnishing copies of information pursuant to  
 14          paragraph (1). The Secretary may by regulations  
 15          prescribe the maximum amount which will constitute  
 16          a reasonable charge under the preceding sentence.”.

17          (2) ENFORCEMENT.—Section 502(c)(4) of such  
 18          Act (29 U.S.C. 1132(c)(4)) is amended by striking  
 19          “section 101(j)” and inserting “subsection (j) or (k)  
 20          of section 101”.

21          (3) REGULATIONS.—The Secretary shall pre-  
 22          scribe regulations under section 101(k)(2) of the  
 23          Employee Retirement Income Security Act of 1974  
 24          (added by paragraph (1)) not later than 270 days  
 25          after the date of the enactment of this Act.



1 (b) NOTICE OF POTENTIAL WITHDRAWAL LIABILITY  
2 TO MULTIEMPLOYER PLANS.—

3 (1) IN GENERAL.—Section 101 of such Act (as  
4 amended by subsection (a)) is amended—

5 (A) by redesignating subsection (l) as sub-  
6 section (m); and

7 (B) by inserting after subsection (k) the  
8 following new subsection:

9 “(l) NOTICE OF POTENTIAL WITHDRAWAL LIABIL-  
10 ITY.—

11 “(1) IN GENERAL.—The plan sponsor or ad-  
12 ministrator of a multiemployer plan shall, upon writ-  
13 ten request, furnish to any employer who has an ob-  
14 ligation to contribute to the plan a notice of—

15 “(A) the estimated amount which would be  
16 the amount of such employer’s withdrawal li-  
17 ability under part 1 of subtitle E of title IV if  
18 such employer withdrew on the last day of the  
19 plan year preceding the date of the request, and

20 “(B) an explanation of how such estimated  
21 liability amount was determined, including the  
22 actuarial assumptions and methods used to de-  
23 termine the value of the plan liabilities and as-  
24 sets, the data regarding employer contributions,  
25 unfunded vested benefits, annual changes in the

1 plan's unfunded vested benefits, and the appli-  
2 cation of any relevant limitations on the esti-  
3 mated withdrawal liability.

4 For purposes of subparagraph (B), the term 'em-  
5 ployer contribution' means, in connection with a par-  
6 ticipant, a contribution made by an employer as an  
7 employer of such participant.

8 “(2) COMPLIANCE.—Any notice required to be  
9 provided under paragraph (1)—

10 “(A) shall be provided to the requesting  
11 employer within—

12 “(i) 180 days after the request in a  
13 form and manner prescribed in regulations  
14 of the Secretary, or

15 “(ii) subject to regulations of the Sec-  
16 retary, such longer time as may be nec-  
17 essary in the case of a plan that deter-  
18 mines withdrawal liability based on any  
19 method described under paragraph (4) or  
20 (5) of section 4211(c); and

21 “(B) may be provided in written, elec-  
22 tronic, or other appropriate form to the extent  
23 such form is reasonably accessible to employers  
24 to whom the information is required to be pro-  
25 vided.

1           “(3) LIMITATIONS.—In no case shall an em-  
 2           ployer be entitled under this subsection to receive  
 3           more than one notice described in paragraph (1)  
 4           during any one 12-month period. The person re-  
 5           quired to provide such notice may make a reasonable  
 6           charge to cover copying, mailing, and other costs of  
 7           furnishing such notice pursuant to paragraph (1).  
 8           The Secretary may by regulations prescribe the max-  
 9           imum amount which will constitute a reasonable  
 10          charge under the preceding sentence.”.

11           (2) ENFORCEMENT.—Section 502(c)(4) of such  
 12          Act (29 U.S.C. 1132(c)(4)) is amended by striking  
 13          “section 101(j) or (k)” and inserting “subsection (j),  
 14          (k), or (l) of section 101”.

15          (c) NOTICE OF AMENDMENT REDUCING FUTURE AC-  
 16          CRUALS.—Section 204(h)(1) of such Act (29 U.S.C.  
 17          1054(h)(1)) is amended by inserting at the end before the  
 18          period “and to each employer who has an obligation to  
 19          contribute to the plan.”.

20          (d) EFFECTIVE DATE.—The amendments made by  
 21          this section shall apply to plan years beginning after De-  
 22          cember 31, 2005.

1 **SEC. 503. ADDITIONAL ANNUAL REPORTING REQUIRE-**  
 2 **MENTS.**

3 (a) ADDITIONAL ANNUAL REPORTING REQUIRE-  
 4 MENTS WITH RESPECT TO DEFINED BENEFIT PLANS.—

5 (1) IN GENERAL.—Section 103 of the Employee  
 6 Retirement Income Security Act of 1974 (29 U.S.C.  
 7 1023) is amended—

8 (A) in subsection (a)(1)(B), by striking  
 9 “subsections (d) and (e)” and inserting “sub-  
 10 sections (d), (e), and (f)”; and

11 (B) by adding at the end the following new  
 12 subsection:

13 “(f) ADDITIONAL INFORMATION WITH RESPECT TO  
 14 DEFINED BENEFIT PLANS.—

15 “(1) GENERAL INFORMATION.—With respect to  
 16 any defined benefit plan, an annual report under  
 17 this section for a plan year shall include the fol-  
 18 lowing:

19 “(A) In any case in which any liabilities to  
 20 participants or their beneficiaries under such  
 21 plan as of the end of such plan year consist (in  
 22 whole or in part) of liabilities to such partici-  
 23 pants and beneficiaries under 2 or more pen-  
 24 sion plans as of immediately before such plan  
 25 year, the funded percentage of each of such 2  
 26 or more pension plans as of the last day of such

1 plan year and the funded percentage of the plan  
2 with respect to which the annual report is filed  
3 as of the last day of such plan year.

4 “(B) For purposes of this paragraph, the  
5 term ‘funded percentage’—

6 “(i) in the case of a single-employer  
7 plan, means the funding target attainment  
8 percentage, as defined in section  
9 303(d)(2), and

10 “(ii) in the case of a multiemployer  
11 plan, has the meaning given such term in  
12 section 305(i)(2).

13 “(2) ADDITIONAL INFORMATION FOR MULTITEM-  
14 PLOYER PLANS.—With respect to any defined ben-  
15 efit plan which is a multiemployer plan, an annual  
16 report under this section for a plan year shall in-  
17 clude, in addition to the information required under  
18 paragraph (1), the following, as of the end of the  
19 plan year to which the notice relates:

20 “(A) The number of employers obligated to  
21 contribute to the plan.

22 “(B) A list of the employers that contrib-  
23 uted more than 5 percent of the total contribu-  
24 tions to the plan during such plan year.

“(C) The number of participants under the plan on whose behalf no employer contributions have been made to the plan for such plan year and for each of the 2 preceding plan years. For purposes of this subparagraph, the term ‘employer contribution’ means, in connection with a participant, a contribution made by an employer as an employer of such participant.

“(D) The ratio of—

“(i) the number of participants under the plan on whose behalf no employer had an obligation to make an employer contribution during the plan year, to

“(ii) the number of participants under the plan on whose behalf no employer had an obligation to make an employer contribution during each of the 2 preceding plan years.

“(E) Whether the plan received an amortization extension under section 304(d) or section 431(d) of the Internal Revenue Code of 1986 for such plan year and, if so, the amount of the difference between the minimum required contribution for the year and the minimum required contribution which would have been re-

1           quired without regard to the extension, and the  
2           period of such extension.

3           “(F) Whether the plan used the shortfall  
4           funding method (as such term is used in section  
5           305) for such plan year and, if so, the amount  
6           of the difference between the minimum required  
7           contribution for the year and the minimum re-  
8           quired contribution which would have been re-  
9           quired without regard to the use of such meth-  
10          od, and the period of use of such method.

11          “(G) Whether the plan was in critical or  
12          endangered status under section 305 for such  
13          plan year, and if so, a summary of any funding  
14          improvement or rehabilitation plan (or modi-  
15          fication thereto) adopted during the plan year,  
16          and the funding ratio of the plan.

17          “(H) The number of employers that with-  
18          drew from the plan during the preceding plan  
19          year and the aggregate amount of withdrawal  
20          liability assessed, or estimated to be assessed,  
21          against such withdrawn employers.

22          “(I) In the case of a multiemployer plan  
23          that has merged with another plan or to which  
24          assets and liabilities have been transferred, the  
25          actuarial valuation of the assets and liabilities

1 of each affected plan during the year preceding  
 2 the effective date of the merger or transfer,  
 3 based upon the most recent data available as of  
 4 the day before the first day of the plan year, or  
 5 other valuation method performed under stand-  
 6 ards and procedures as the Secretary may pre-  
 7 scribe by regulation.”.

8 (2) GUIDANCE BY SECRETARY OF LABOR.—

9 (A) IN GENERAL.—Not later than 180  
 10 days after the date of enactment of this Act,  
 11 the Secretary of Labor shall publish guidance  
 12 to assist multiemployer defined benefit plans  
 13 to—

14 (i) identify and enumerate plan par-  
 15 ticipants for whom there is no employer  
 16 with an obligation to make an employer  
 17 contribution under the plan; and

18 (ii) report such information under sec-  
 19 tion 103(f)(2)(D) of the Employee Retire-  
 20 ment Income Security Act of 1974 (as  
 21 added by this section).

22 (B) WAIVER OF REQUIREMENT.—The Sec-  
 23 retary of Labor shall waive the requirement  
 24 under section 103(f)(2)(D) of such Act (as



1           added by this section) for the construction and  
2           entertainment industries.

3           (b) ADDITIONAL INFORMATION IN ANNUAL ACTU-  
4   ARIAL STATEMENT REGARDING PLAN RETIREMENT PRO-  
5   JECTIONS.—Section 103(d) of such Act (29 U.S.C.  
6   1023(d)) is amended—

7           (1) by redesignating paragraphs (12) and (13)  
8           as paragraphs (13) and (14), respectively; and

9           (2) by inserting after paragraph (11) the fol-  
10   lowing new paragraph:

11           “(12) A statement explaining the actuarial as-  
12           sumptions and methods used in projecting future re-  
13           tirements and forms of benefit distributions under  
14           the plan.”.

15           (c) FORM AND MANNER OF REPORT.—Section  
16   104(b)(3) of such Act (29 U.S.C. 1024(b)(3)) is amended  
17   by—

18           (1) striking “(3) Within” and inserting—

19           “(A) IN GENERAL.—Within”; and

20           (2) adding at the end the following:

21           “(B) FORM OF REPORT.—The material  
22           provided pursuant to subparagraph (A) to sum-  
23           marize the latest annual report shall be written  
24           in a manner calculated to be understood by the  
25           average plan participant.

1 (d) FURNISHING SUMMARY PLAN INFORMATION TO  
 2 EMPLOYERS AND EMPLOYEE REPRESENTATIVES OF  
 3 MULTIEMPLOYER PLANS.—

4 (1) IN GENERAL.—Section 104 of such Act (29  
 5 U.S.C. 1024) is amended—

6 (A) in the header, by striking “PARTICI-  
 7 PANTS” and inserting “PARTICIPANTS AND CER-  
 8 TAIN EMPLOYERS”;

9 (B) redesignating subsection (d) as sub-  
 10 section (e); and

11 (C) inserting after subsection (c) the fol-  
 12 lowing:

13 “(d) FURNISHING SUMMARY PLAN INFORMATION TO  
 14 EMPLOYERS AND EMPLOYEE REPRESENTATIVES OF  
 15 MULTIEMPLOYER PLANS.—

16 “(1) IN GENERAL.—With respect to a multiem-  
 17 ployer plan subject to this section, within 30 days  
 18 after the due date under subsection (a)(1) for the  
 19 filing of the annual report for the fiscal year of the  
 20 plan, the administrators shall furnish to each em-  
 21 ployee organization, employer with an obligation to  
 22 contribute to the plan, and the Pension Benefit  
 23 Guaranty Corporation, a report that contains—

24 “(A) a description of the contribution  
 25 schedules and benefit formulas under the plan,

1 and any modification to such schedules and for-  
2 mulas, during such plan year;

3 “(B) the number of employers obligated to  
4 contribute to the plan;

5 “(C) a list of the employers that contrib-  
6 uted more than 5 percent of the total contribu-  
7 tions to the plan during such plan year;

8 “(D) the number of participants under the  
9 plan on whose behalf no employer contributions  
10 (which, for purposes of this paragraph, means,  
11 in connection with a participant, a contribution  
12 made by an employer as an employer of such  
13 participant) have been made to the plan for  
14 such plan year and for each of the 2 preceding  
15 plan years;

16 “(E) whether the plan was in critical or  
17 endangered status under section 305 for such  
18 plan year and, if so, include—

19 “(i) a list of the actions taken by the  
20 plan to improve its funding status; and

21 “(ii) a statement describing how a  
22 person may obtain a copy of the plan’s im-  
23 provement or rehabilitation plan, as appro-  
24 priate, adopted under section 305 and the  
25 actuarial and financial data that dem-

1           onstrate any action taken by the plan to-  
2           ward fiscal improvement;

3           “(H) the number of employers that with-  
4           drew from the plan during the preceding plan  
5           year and the aggregate amount of withdrawal  
6           liability assessed, or estimated to be assessed,  
7           against such withdrawn employers, as reported  
8           on the annual report for the plan year to which  
9           the report under this subsection relates;

10          “(I) in the case of a multiemployer plan  
11          that has merged with another plan or to which  
12          assets and liabilities have been transferred, the  
13          actuarial valuation of the assets and liabilities  
14          of each affected plan during the year preceding  
15          the effective date of the merger or transfer,  
16          based upon the most recent data available as of  
17          the day before the first day of the plan year, or  
18          other valuation method performed under stand-  
19          ards and procedures as the Secretary may pre-  
20          scribe by regulation;

21          “(J) a description as to whether the  
22          plan—

23                 “(i) sought or received an amortiza-  
24                 tion extension under section 304(d) or sec-

tion 431(d) of the Internal Revenue Code  
of 1986 for such plan year;

“(ii) used the shortfall funding meth-  
od (as such term is used in section 305)  
for such plan year; or

“(iii) was in critical or endangered  
status under section 305 for such plan  
year; and

“(K) notification of the right under this  
section of the recipient to a copy of the annual  
report filed with the Secretary under subsection  
(a), summary annual report, summary plan de-  
scription, summary of any material modification  
of the plan, upon written request, but that—

“(i) in no case shall a recipient be en-  
titled to receive more than one copy of any  
such report described during any one 12-  
month period; and

“(ii) the administrator may make a  
reasonable charge to cover copying, mail-  
ing, and other costs of furnishing copies of  
information pursuant to this subpara-  
graph.

“(2) EFFECT OF SECTION.—Nothing in this  
section waives any other provision under this title re-

1       quiring plan administrators to provide, upon request,  
2       information to employers that have an obligation to  
3       contribution under the plan.”.

4       (e) MODEL FORM.—Not later than 270 days after  
5       the date of the enactment of this Act, the Secretary of  
6       Labor shall publish a model form for providing the state-  
7       ments, schedules, and other material required to be pro-  
8       vided under section 104(b)(3) of the Employee Retirement  
9       Income Security Act of 1974, as amended by this section.  
10      The Secretary of Labor may promulgate any interim final  
11      rules as the Secretary determines appropriate to carry out  
12      the provisions of this subsection.

13      (f) FIVE-YEAR REPORT WITH RESPECT TO MULTI-  
14      EMPLOYER PLANS.—Section 4022A(f) of such Act (29  
15      U.S.C. 1322a(f)) is amended by adding at the end the fol-  
16      lowing:

17               “(6) Not later than 5 years after the date of  
18      the enactment of the Pension Security and Trans-  
19      parency Act of 2005, and at least every fifth year  
20      thereafter, the corporation shall submit to Congress  
21      a report that contains a description of the fiscal con-  
22      ditions of the multiemployer pension plan system as  
23      of the date of such report based on the information  
24      submitted to the corporation under section 104(d).”.

1 (g) CONFORMING AMENDMENT.—Title IV of such  
2 Act (29 U.S.C. 1301 et seq.) is amended by striking sec-  
3 tion 4011.

4 (h) EFFECTIVE DATES.—

5 (1) IN GENERAL.—The amendments made by  
6 this section shall apply to plan years beginning after  
7 December 31, 2005.

8 (2) SPECIAL RULE.—Notwithstanding the pro-  
9 visions of paragraph (1), the requirement under sec-  
10 tion 103(f)(2)(D) of the Employee Retirement In-  
11 come Security Act (as added by this section) shall  
12 apply to plan years beginning after December 31,  
13 2007.

14 **SEC. 504. TIMING OF ANNUAL REPORTING REQUIREMENTS.**

15 (a) FILING AFTER 285 DAYS AFTER PLAN YEAR  
16 ONLY IN CASES OF HARDSHIP.—Section 104(a)(1) of  
17 such Act (29 U.S.C. 1024(a)(1)) is amended by inserting  
18 after the first sentence the following new sentence: “In  
19 the case of a pension plan, the Secretary may extend the  
20 deadline for filing the annual report for any plan year past  
21 285 days after the close of the plan year only on a case  
22 by case basis and only in cases of hardship, in accordance  
23 with regulations which shall be prescribed by the Sec-  
24 retary.”.

1 (b) INTERNET DISPLAY OF INFORMATION.—Section  
 2 104(b) of such Act (29 U.S.C. 1024(b)) is amended by  
 3 adding at the end the following:

4 “(5) Identification and basic plan information and ac-  
 5 tual information included in the annual report for any  
 6 plan year shall be filed with the Secretary in an electronic  
 7 format which accommodates display on the Internet, in ac-  
 8 cordance with regulations which shall be prescribed by the  
 9 Secretary. The Secretary shall provide for display of such  
 10 information included in the annual report, within 90 days  
 11 after the date of the filing of the annual report, on an  
 12 Internet website maintained by the Secretary and other  
 13 appropriate media. Such information shall also be dis-  
 14 played on any Internet website maintained by the plan  
 15 sponsor (or by the plan administrator on behalf of the plan  
 16 sponsor), in accordance with regulations which shall be  
 17 prescribed by the Secretary.”.

18 (c) SUMMARY ANNUAL REPORT FILED WITHIN 30  
 19 DAYS AFTER DEADLINE FOR FILING OF ANNUAL RE-  
 20 PORT.—Section 104(b)(3) of such Act (29 U.S.C.  
 21 1024(b)(3)), as amended by section 503, is amended by—

22 (1) striking “(3)(A) Within 210 days after the  
 23 close of the fiscal year,” and inserting “(3)(A) With-  
 24 in 30 days after the due date under subsection



1 (a)(1) for the filing of the annual report for the fis-  
 2 cal year of the plan”;

3 (2) striking “the latest” and inserting “such”;  
 4 and

5 (3) adding at the end the following

6 “(C) DATE OF INTERNET DISPLAY.—Dis-  
 7 play of the summary annual report on the  
 8 Internet website maintained by the plan spon-  
 9 sor (or by the plan administrator on behalf of  
 10 the plan sponsor) by the date required under  
 11 subparagraph (A) shall be treated as furnishing  
 12 such report to each participant and beneficiary  
 13 receiving benefits under the plan by such date,  
 14 except that such report shall be furnished to  
 15 each such participant and beneficiary as soon  
 16 as practicable thereafter, and in no event later  
 17 the 30 days after such date.”.

18 (d) EFFECTIVE DATE.—The amendments made by  
 19 this section shall apply to plan years beginning after De-  
 20 cember 31, 2005.

21 **SEC. 505. SECTION 4010 FILINGS WITH THE PBGC.**

22 (a) CHANGE IN CRITERIA FOR PERSONS REQUIRED  
 23 TO PROVIDE INFORMATION TO PBGC.—Section 4010(b)  
 24 of the Employee Retirement Income Security Act of 1974  
 25 (29 U.S.C. 1310(b)) is amended—

1 (1) in paragraph (1)—

2 (A) by striking “(1) the aggregate” and in-  
3 serting “(1)(A) the aggregate”;

4 (B) by striking the semicolon and inserting  
5 “; and”;

6 (C) by inserting after subparagraph (A)  
7 the following:

8 “(B)(i) the aggregate funding targets attain-  
9 ment percentage of the plan (as defined in sub-  
10 section (d)) is less than 90 percent; or

11 “(ii) any debt instrument of the plan sponsor or  
12 the plan sponsor has received a rating described in  
13 subclause (I) or (II) of section 303(i)(5)(A)(i);”;

14 (2) by redesignating paragraphs (2) and (3) as  
15 paragraphs (4) and (5), respectively, and by insert-  
16 ing before paragraph (4) (as so redesignated) the  
17 following new paragraphs:

18 “(2) the aggregate funding targets attainment  
19 percentage of the plan (as defined in subsection (d))  
20 is less than 60 percent;

21 “(3)(A) the aggregate funding targets attain-  
22 ment percentage of the plan (as defined in sub-  
23 section (d)) is less than 75 percent, and

24 “(B) the plan sponsor is in an industry with re-  
25 spect to which the corporation determines that there

1 is substantial unemployment or underemployment  
 2 and the sales and profits are depressed or declin-  
 3 ing;”.

4 (b) ADDITIONAL INFORMATION REQUIRED.—Section  
 5 4010 of the Employee Retirement Income Security Act of  
 6 1974 (29 U.S.C. 1310) is amended by adding at the end  
 7 the following new subsection:

8 “(d) ADDITIONAL INFORMATION REQUIRED.—

9 “(1) IN GENERAL.—The information submitted  
 10 to the corporation under subsection (a) shall  
 11 include—

12 “(A) the amount of benefit liabilities under  
 13 the plan determined using the assumptions used  
 14 by the corporation in determining liabilities;

15 “(B) the funding target of the plan deter-  
 16 mined as if the plan has been in at-risk status  
 17 for at least 5 plan years; and

18 “(C) the funding target attainment per-  
 19 centage of the plan.

20 “(2) DEFINITIONS.—For purposes of this sub-  
 21 section:

22 “(A) VALUE OF PLAN ASSETS.—The term  
 23 ‘value of plan assets’ means the value of plan  
 24 assets, as determined under section 303(g)(3).

1           “(B) FUNDING TARGET.—The term ‘fund-  
2           ing target’ has the meaning provided under sec-  
3           tion 303(d)(1).

4           “(C) FUNDING TARGET ATTAINMENT PER-  
5           CENTAGE.—The term ‘funding target attain-  
6           ment percentage’ has the meaning provided in  
7           section 303(d)(2).

8           “(D) AGGREGATE FUNDING TARGETS AT-  
9           TAINMENT PERCENTAGE.—The term ‘aggregate  
10          funding targets attainment percentage’ means,  
11          with respect to a contributing sponsor for a  
12          plan year, the percentage, taking into account  
13          all plans maintained by the contributing spon-  
14          sor and the members of its controlled group as  
15          of the end of such plan year, which—

16               “(i) the aggregate total of the values  
17               of plan assets, as of the end of such plan  
18               year, of such plans, is of

19               “(ii) the aggregate total of the fund-  
20               ing targets of such plans, as of the end of  
21               such plan year, taking into account only  
22               benefits to which participants and bene-  
23               ficiaries have a nonforfeitable right.

1                   “(E) AT-RISK STATUS.—The term ‘at-risk  
2                   status’ has the meaning provided in section  
3                   303(i)(4).

4                   “(e) NOTICE TO CONGRESS.—The Corporation shall,  
5                   on an annual basis, submit to the Committee on Health,  
6                   Education, Labor, and Pensions of the Senate and the  
7                   Committee on Education and the Workforce of the House  
8                   of Representatives, a summary report of the information  
9                   submitted to the Corporation under this section.”.

10                  (c) EFFECTIVE DATE.—The amendment made by  
11                  this section shall apply with respect to plan years begin-  
12                  ning after 2006.

13                  **SEC. 506. DISCLOSURE OF TERMINATION INFORMATION TO**  
14                  **PLAN PARTICIPANTS.**

15                  (a) DISTRESS TERMINATIONS.—

16                         (1) IN GENERAL.—Section 4041(c)(2) of the  
17                         Employee Retirement Income Security Act of 1974  
18                         (29 U.S.C. 1341(c)(2)) is amended by adding at the  
19                         end the following:

20                                 “(D) DISCLOSURE OF TERMINATION IN-  
21                                 FORMATION.—

22   “(i) IN GENERAL.—A plan adminis-  
23   trator that has filed a notice of intent to  
24   terminate under subsection (a)(2) shall  
25   provide to an affected party any informa-

tion provided to the corporation under paragraph (2) not later than 15 days after—

“(I) receipt of a request from the affected party for the information; or

“(II) the provision of new information to the corporation relating to the previous request.

“(ii) CONFIDENTIALITY.—

“(I) IN GENERAL.—The plan administrator shall not provide information under clause (i) in a form that includes any information that may directly or indirectly be associated with, or otherwise identify, an individual participant or beneficiary.

“(II) LIMITATION.—A court may limit disclosure under this subparagraph of confidential information described in section 552(b) of title 5, United States Code, to any authorized representative of the participants or beneficiaries that agrees to ensure the confidentiality of such information.

1 “(iii) FORM AND MANNER OF INFOR-  
 2 MATION; CHARGES.—

3 “(I) FORM AND MANNER.—The  
 4 corporation may prescribe the form  
 5 and manner of the provision of infor-  
 6 mation under this subparagraph,  
 7 which shall include delivery in written,  
 8 electronic, or other appropriate form  
 9 to the extent that such form is rea-  
 10 sonably accessible to individuals to  
 11 whom the information is required to  
 12 be provided.

13 “(II) REASONABLE CHARGES.—A  
 14 plan sponsor may charge a reasonable  
 15 fee for any information provided  
 16 under this subparagraph in other than  
 17 electronic form.

18 “(iv) AUTHORIZED REPRESENTA-  
 19 TIVE.—For purposes of this subparagraph,  
 20 the term ‘authorized representative’ means  
 21 any employee organization representing  
 22 participants in the pension plan.”.

23 (2) CONFORMING AMENDMENT.—Section  
 24 4041(c)(1) of the Employee Retirement Income Se-  
 25 curity Act of 1974 (29 U.S.C. 1341(c)(1)) is amend-

ed in subparagraph (C) by striking “subparagraph (B)” and inserting “subparagraphs (B) and (D)”.

(b) INVOLUNTARY TERMINATIONS.—

(1) IN GENERAL.—Section 4042(c) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1342(c)) is amended by—

(A) striking “(c) If the” and inserting

“(c)(1) If the”;

(B) redesignating paragraph (3) as paragraph (2); and

(C) adding at the end the following:

“(3) DISCLOSURE OF TERMINATION INFORMATION.—

“(A) IN GENERAL.—

“(i) INFORMATION FROM PLAN SPONSOR OR ADMINISTRATOR.—A plan sponsor or plan administrator of a single-employer plan that has received a notice from the corporation of a determination that the plan should be terminated under this section shall provide to an affected party any information provided to the corporation in conjunction with the plan termination.

“(ii) INFORMATION FROM CORPORATION.—The corporation shall provide a



1 copy of the administrative record, includ-  
2 ing the trusteeship decision record of a ter-  
3 mination of a plan described under clause  
4 (i).

5 “(B) TIMING OF DISCLOSURE.—The plan  
6 sponsor, plan administrator, or the corporation,  
7 as applicable, shall provide the information de-  
8 scribed in subparagraph (A) not later than 15  
9 days after—

10 “(i) receipt of a request from an af-  
11 fected party for such information; or

12 “(ii) in the case of information de-  
13 scribed under subparagraph (A)(i), the  
14 provision of any new information to the  
15 corporation relating to a previous request  
16 by an affected party.

17 “(C) CONFIDENTIALITY.—

18 “(i) IN GENERAL.—The plan adminis-  
19 trator and plan sponsor shall not provide  
20 information under subparagraph (A)(i) in  
21 a form which includes any information that  
22 may directly or indirectly be associated  
23 with, or otherwise identify, an individual  
24 participant or beneficiary.

1           “(ii) LIMITATION.—A court may limit  
 2 disclosure under this paragraph of con-  
 3 fidential information described in section  
 4 552(b) of title 5, United States Code, to  
 5 authorized representatives (within the  
 6 meaning of section 4041(c)(2)(D)(iv)) of  
 7 the participants or beneficiaries that agree  
 8 to ensure the confidentiality of such infor-  
 9 mation.

10           “(D) FORM AND MANNER OF INFORMA-  
 11 TION; CHARGES.—

12           “(i) FORM AND MANNER.—The cor-  
 13 poration may prescribe the form and man-  
 14 ner of the provision of information under  
 15 this paragraph, which shall include delivery  
 16 in written, electronic, or other appropriate  
 17 form to the extent that such form is rea-  
 18 sonably accessible to individuals to whom  
 19 the information is required to be provided.

20           “(ii) REASONABLE CHARGES.—A plan  
 21 sponsor may charge a reasonable fee for  
 22 any information provided under this para-  
 23 graph in other than electronic form.”.

24           “(c) EFFECTIVE DATE.—The amendments made by  
 25 this section shall apply to any plan termination under title

1 IV of the Employee Retirement Income Security Act of  
 2 1974 (29 U.S.C. 1301 et seq.) with respect to which the  
 3 notice of intent to terminate (or in the case of a termi-  
 4 nation by the Pension Benefit Guaranty Corporation, a  
 5 notice of determination under section 4042 of such Act  
 6 (29 U.S.C. 1342)) occurs after the date of enactment of  
 7 this Act.

8 **SEC. 507. BENEFIT SUSPENSION NOTICE.**

9 (a) MODIFICATION OF REGULATION.—The Secretary  
 10 of Labor shall modify the regulation under subparagraph  
 11 (B) of section 203(a)(3) of the Employee Retirement In-  
 12 come Security Act of 1974 (29 U.S.C. 1053(a)(3)(B)) to  
 13 provide that the notification required by such regulation  
 14 in connection with any suspension of benefits described in  
 15 such subparagraph—

16 (1) in the case of an employee who returns to  
 17 service described in section 203(a)(3)(B) (i) or (ii)  
 18 of such Act after commencement of payment of ben-  
 19 efits under the plan, shall be made during the first  
 20 calendar month or the first 4- or 5-week payroll pe-  
 21 riod ending in a calendar month in which the plan  
 22 withholds payments, and

23 (2) in the case of any employee who is not de-  
 24 scribed in paragraph (1)—

1 (A) may be included in the summary plan  
 2 description for the plan furnished in accordance  
 3 with section 104(b) of such Act (29 U.S.C.  
 4 1024(b)), rather than in a separate notice, and  
 5 (B) need not include a copy of the relevant  
 6 plan provisions.

7 (b) EFFECTIVE DATE.—The modification made  
 8 under this section shall apply to plan years beginning after  
 9 December 31, 2005.

10 **SEC. 508. STUDY AND REPORT BY GOVERNMENT ACCOUNT-**  
 11 **ABILITY OFFICE.**

12 (a) IN GENERAL.—The Comptroller General of the  
 13 United States shall conduct a study to determine the effec-  
 14 tiveness of the enforcement of provisions in the Employee  
 15 Retirement Income Security Act of 1974 (29 U.S.C. 1001  
 16 et seq.) and in other Federal laws designed to protect pen-  
 17 sion plans and the assets and participants of such plan  
 18 from fraud and mismanagement, including excessive in-  
 19 vestment management fees, violations of fiduciary duties  
 20 under Title I of such Act, and the quality of plan assets.

21 (b) CONTENT OF STUDY.—The study described in  
 22 subsection (a) shall include:

23 (1) An identification of which Federal depart-  
 24 ments and agencies have responsibility for enforce-

1       ment of these provisions, including the recovery of  
2       lost plan assets due to fraud and mismanagement.

3           (2) Identification of all administrative enforce-  
4       ment powers, procedures, and strategies used by the  
5       Securities and Exchange Commission that have the  
6       potential to improve the Department of Labor's en-  
7       forcement of the fiduciary provisions of the Em-  
8       ployee Retirement Income Security Act of 1974 (29  
9       U.S.C. 1001 et seq.).

10          (3) Identification of any statutory or other bar-  
11       riers that restrict the Department of Labor's author-  
12       ity to use such powers, procedures, and strategies  
13       identified in paragraph (2).

14          (4) An evaluation of whether giving additional  
15       investigative or enforcement authority to the Pension  
16       Benefit Guaranty Corporation or the Securities and  
17       Exchange Commission would significantly improve  
18       enforcement of those provisions.

19          (5) An evaluation of the current authority of  
20       the Pension Benefit Guaranty Corporation to bring  
21       actions to recover any funds lost by pension plans  
22       due to violations of any fiduciary standards under  
23       Title I of such Act or other Federal statutes.

24          (6) The impact that expanding any such au-  
25       thority by the Pension Benefit Guaranty Corpora-

1       tion to bring such actions would have on the Cor-  
 2       poration's solvency.

3       (c) REPORT.—Not later than 6 months after the en-  
 4       actment of this Act, the Comptroller General shall submit  
 5       a report to Congress on the study conducted under sub-  
 6       section (a) that includes such recommendations for legisla-  
 7       tion or administrative action as the Comptroller General  
 8       determines are appropriate.

9       **TITLE VI—TREATMENT OF CASH**  
 10       **BALANCE AND OTHER HY-**  
 11       **BRID DEFINED BENEFIT PEN-**  
 12       **SION PLANS**

13       **SEC. 601. PROSPECTIVE APPLICATION OF AGE DISCRIMINA-**  
 14       **TION, CONVERSION, AND PRESENT VALUE AS-**  
 15       **SUMPTION RULES.**

16       (a) APPLICATION OF AGE DISCRIMINATION PROHIBI-  
 17       TIONS.—

18               (1) AMENDMENT OF ERISA.—Section 204(b) of  
 19       the Employee Retirement Income Security Act of  
 20       1974 (29 U.S.C. 1054(b)) is amended by adding at  
 21       the end the following:

22               “(5) SPECIAL RULES FOR CASH BALANCE AND  
 23       OTHER HYBRID DEFINED BENEFIT PLANS.—

24               “(A) IN GENERAL.—A qualified cash bal-  
 25       ance plan shall not be treated as violating the

1 requirements of paragraph (1)(H) merely be-  
 2 cause it may reasonably be expected that the  
 3 period over which interest credits will be made  
 4 to a participant's accumulation account (or its  
 5 equivalent) is longer for a younger participant.  
 6 This paragraph shall not apply to any plan if  
 7 the rate of any pay credit or interest credit to  
 8 such an account under the plan decreases by  
 9 reason of the participant's attainment of any  
 10 age.

11 “(B) QUALIFIED CASH BALANCE PLAN.—

12 For purposes of this paragraph—

13 “(i) IN GENERAL.—The term ‘quali-  
 14 fied cash balance plan’ means a cash bal-  
 15 ance plan which meets the vesting require-  
 16 ment under clause (ii) and the interest  
 17 credit requirement under clause (iii).

18 “(ii) VESTING REQUIREMENTS.—A  
 19 plan meets the requirements of this clause  
 20 if an employee who has completed at least  
 21 3 years of service has a nonforfeitable  
 22 right to 100 percent of the employee's ac-  
 23 crued benefit derived from employer con-  
 24 tributions.

1 “(iii) INTEREST CREDITS.—A plan  
 2 meets the requirements of this clause if the  
 3 terms of the plan provide that any interest  
 4 credit (or equivalent amount) for any plan  
 5 year shall be at a rate which—

6 “(I) is not less than the applica-  
 7 ble Federal mid-term interest rate (as  
 8 determined under section 1274(d)(1)  
 9 of the Internal Revenue Code of  
 10 1986), and

11 “(II) is not greater than the  
 12 greater of the rate determined under  
 13 subclause (I) or a rate equal to the  
 14 rate of interest on amounts invested  
 15 conservatively in long-term investment  
 16 grade corporate bonds.

17 “(iv) DETERMINATION OF RATES.—  
 18 For purposes of clause (iii)(II), the rate of  
 19 interest on amounts invested conservatively  
 20 in long-term investment grade corporate  
 21 bonds shall be determined by the Secretary  
 22 of the Treasury on the basis of 2 or more  
 23 indices that are selected periodically by the  
 24 Secretary of the Treasury. The Secretary  
 25 of the Treasury shall make publicly avail-



able the indices and methodology used to  
determine the rate.

“(v) VARIABLE RATE OF INTEREST.—

If the interest credit rate under the plan is  
a variable rate, the plan shall provide that,  
upon the termination of the plan, the rate  
of interest used to determine accrued bene-  
fits under the plan shall be equal to the av-  
erage of the rates of interest used under  
the plan during the 5-year period ending  
on the termination date.

“(C) CASH BALANCE PLAN.—For purposes  
of this paragraph, the term ‘cash balance plan’  
means a defined benefit plan under which—

“(i) the accrued benefit is determined  
by reference to the balance of a hypo-  
thetical accumulation account, and

“(ii) pay credits and interest credits  
are credited to such account.

“(D) REGULATIONS TO INCLUDE SIMILAR  
OR OTHER HYBRID PLANS.—

“(i) CASH BALANCE PLAN.—The Sec-  
retary of the Treasury shall issue regula-  
tions which include in the definition of  
cash balance plan any defined benefit plan

(or any portion of such a plan) which has an effect similar to a cash balance plan. Such regulations may provide that if a plan sponsor represents in communications to participants and beneficiaries that a plan amendment results in a plan being described in the preceding sentence, such plan shall be treated as a cash balance plan.

“(ii) QUALIFIED CASH BALANCE PLAN.—The Secretary of the Treasury may in the regulations issued under clause (i) provide for the treatment of a cash balance plan as a qualified cash balance plan in cases where the cash balance plan has an effect similar to the qualified cash balance plan.”.

(2) AGE DISCRIMINATION IN EMPLOYMENT ACT.—Section 4(i)(2) of the Age Discrimination of Employment Act of 1967 (29 U.S.C. 623(i)(2)) is amended—

(A) by inserting “(A)” after “(2)”, and

(B) by adding at the end the following new subparagraph:

1       “(B) A defined benefit plan which is treated as a  
 2 qualified cash balance plan for purposes of section  
 3 204(b)(5) of the Employee Retirement Income Security  
 4 Act of 1974 shall not be treated as violating the require-  
 5 ments of paragraph (1)(A) merely because it may reason-  
 6 ably be expected that the period over which interest credits  
 7 will be made under the plan to a participant’s accumula-  
 8 tion account (or its equivalent) is longer for a younger  
 9 participant. This subparagraph shall not apply to any plan  
 10 if the rate of any pay credit or interest credit to such an  
 11 account under the plan decreases by reason of the partici-  
 12 pant’s attainment of any age.”.

13           (3) AMENDMENT OF INTERNAL REVENUE  
 14 CODE.—Section 411(b) of the Internal Revenue  
 15 Code of 1986 (relating to accrued benefit require-  
 16 ments) is amended by adding at the end the fol-  
 17 lowing:

18           “(5) SPECIAL RULES FOR CASH BALANCE AND  
 19 OTHER HYBRID DEFINED BENEFIT PLANS.—

20           “(A) IN GENERAL.—A qualified cash bal-  
 21 ance plan shall not be treated as violating the  
 22 requirements of paragraph (1)(H) merely be-  
 23 cause it may reasonably be expected that the  
 24 period over which interest credits will be made  
 25 to a participant’s accumulation account (or its

equivalent) is longer for a younger participant.  
 This paragraph shall not apply to any plan if  
 the rate of any pay credit or interest credit to  
 such an account under the plan decreases by  
 reason of the participant's attainment of any  
 age.

“(B) QUALIFIED CASH BALANCE PLAN.—

For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘quali-  
 fied cash balance plan’ means a cash bal-  
 ance plan which meets the vesting require-  
 ment under clause (ii) and the interest  
 credit requirement under clause (iii).

“(ii) VESTING REQUIREMENTS.—A  
 plan meets the requirements of this clause  
 if an employee who has completed at least  
 3 years of service has a nonforfeitable  
 right to 100 percent of the employee's ac-  
 crued benefit derived from employer con-  
 tributions.

“(iii) INTEREST CREDITS.—A plan  
 meets the requirements of this clause if the  
 terms of the plan provide that any interest  
 credit (or equivalent amount) for any plan  
 year shall be at a rate which—

1 “(I) is not less than the applica-  
 2 ble Federal mid-term interest rate (as  
 3 determined under section 1274(d)(1)),  
 4 and

5 “(II) is not greater than the  
 6 greater of the rate determined under  
 7 subclause (I) or a rate equal to the  
 8 rate of interest on amounts invested  
 9 conservatively in long-term investment  
 10 grade corporate bonds.

11 “(iv) DETERMINATION OF RATES.—  
 12 For purposes of clause (iii)(II), the rate of  
 13 interest on amounts invested conservatively  
 14 in long-term investment grade corporate  
 15 bonds shall be determined by the Secretary  
 16 on the basis of 2 or more indices that are  
 17 selected periodically by the Secretary. The  
 18 Secretary shall make publicly available the  
 19 indices and methodology used to determine  
 20 the rate.

21 “(v) VARIABLE RATE OF INTEREST.—  
 22 If the interest credit rate under the plan is  
 23 a variable rate, the plan shall provide that,  
 24 upon the termination of the plan, the rate  
 25 of interest used to determine accrued bene-

fits under the plan shall be equal to the average of the rates of interest used under the plan during the 5-year period ending on the termination date.

“(C) CASH BALANCE PLAN.—For purposes of this paragraph, the term ‘cash balance plan’ means a defined benefit plan under which—

“(i) the accrued benefit is determined by reference to the balance of a hypothetical accumulation account, and

“(ii) pay credits and interest credits are credited to such account.

“(D) REGULATIONS TO INCLUDE SIMILAR OR OTHER HYBRID PLANS.—

“(i) CASH BALANCE PLAN.—The Secretary shall issue regulations which include in the definition of cash balance plan any defined benefit plan (or any portion of such a plan) which has an effect similar to a cash balance plan. Such regulations may provide that if a plan sponsor represents in communications to participants and beneficiaries that a plan amendment results in a plan being described in the preceding

1 sentence, such plan shall be treated as a  
 2 cash balance plan.

3 “(ii) QUALIFIED CASH BALANCE  
 4 PLAN.—The Secretary may in the regula-  
 5 tions issued under clause (i) provide for  
 6 the treatment of a cash balance plan as a  
 7 qualified cash balance plan in cases where  
 8 the cash balance plan has an effect similar  
 9 to the qualified cash balance plan.”.

10 (b) RULES APPLICABLE TO ACCRUED BENEFITS  
 11 UNDER CONVERTED PLANS.—

12 (1) AMENDMENT OF ERISA.—Section 204(g) of  
 13 the Employee Retirement Income Security Act of  
 14 1974 (29 U.S.C. 1054(g)) is amended by adding at  
 15 the end the following new paragraph:

16 “(6) TREATMENT OF CONVERSIONS TO CASH  
 17 BALANCE OR OTHER HYBRID PLANS.—

18 “(A) IN GENERAL.—For purposes of this  
 19 subsection, an applicable plan amendment shall  
 20 be treated as reducing the accrued benefit of a  
 21 participant if, under the terms of the plan as in  
 22 effect after the amendment, the accrued benefit  
 23 of any participant who was a participant as of  
 24 the effective date of the amendment may at any  
 25 time be less than the accrued benefit deter-

1           mined under the method under subparagraph  
 2           (B), (C), or (D) which is specified in the plan  
 3           and applies uniformly to all participants. An  
 4           applicable plan amendment shall in no event be  
 5           treated as meeting the requirements of any  
 6           such subparagraph if the conversion described  
 7           in subparagraph (G)(i) is into a cash balance  
 8           plan other than a qualified cash balance plan  
 9           (as defined in subsection (b)(5)(B)).

10           “(B) NO WEARAWAY.—

11           “(i) IN GENERAL.—The accrued ben-  
 12           efit determined under this subparagraph is  
 13           the sum of—

14           “(I) the participant’s accrued  
 15           benefit for years of service before the  
 16           effective date of the amendment, de-  
 17           termined under the terms of the plan  
 18           as in effect before the amendment,  
 19           plus

20           “(II) except as provided in clause  
 21           (ii), the participant’s accrued benefit  
 22           for years of service after the effective  
 23           date of the amendment, determined  
 24           under the terms of the plan as in ef-  
 25           fect after the amendment.



1                   “(ii) REQUIRED AMOUNTS FOR CER-  
 2 TAIN PERIODS.—Notwithstanding clause  
 3 (i)(II), the plan shall provide that either—

4                   “(I) the accrued benefit of all  
 5 participants for each of the first 5  
 6 plan years to which the amendment  
 7 applies shall be equal to the greater of  
 8 the accrued benefit determined under  
 9 the terms of the plan as in effect both  
 10 before and after the amendment, or

11                   “(II) the accrued benefit for peri-  
 12 ods after the effective date of the  
 13 amendment of all participants who, as  
 14 of the effective date of the amend-  
 15 ment, had attained the age of 40 and  
 16 had a combined age and years of serv-  
 17 ice under the plan of not less than 55  
 18 shall be determined under either of  
 19 the methods described in clause (iii)  
 20 which is selected by the plan and  
 21 which is specified in the amendment.

22                   “(iii) APPLICABLE METHOD.—For  
 23 purposes of clause (ii)(II), the plan shall  
 24 select 1 of the following methods:

1                   “(I) The accrued benefit shall be  
2                   equal to the greater of the accrued  
3                   benefit determined under the terms of  
4                   the plan as in effect both before and  
5                   after the amendment.

6                   “(II) At the election of the par-  
7                   ticipant, the accrued benefit shall be  
8                   determined under the terms of the  
9                   plan as in effect either before or after  
10                  the amendment.

11                  “(C) GREATER OF OLD OR NEW OR ELEC-  
12                  TION OF EITHER.—The accrued benefit deter-  
13                  mined under this subparagraph is the accrued  
14                  benefit determined under 1 of the following  
15                  methods which is selected by the plan and  
16                  which is specified in the amendment:

17                  “(i) The accrued benefit shall be equal  
18                  to the greater of the accrued benefit deter-  
19                  mined under the terms of the plan as in ef-  
20                  fect both before and after the amendment.

21                  “(ii) At the election of the participant,  
22                  the accrued benefit shall be determined  
23                  under the terms of the plan as in effect ei-  
24                  ther before or after the amendment.

1           “(D) METHOD PRESCRIBED BY SEC-  
 2           RETARY.—The accrued benefit determined  
 3           under this subparagraph shall be determined  
 4           under regulations prescribed by the Secretary  
 5           which are consistent with the purposes of this  
 6           paragraph and which may require a plan to  
 7           provide a credit of additional amounts or in-  
 8           creases in initial account balances in amounts  
 9           substantially equivalent to the benefits that  
 10          would be required to be provided to meet the  
 11          requirements of subparagraphs (B) or (C).

12           “(E) INCLUSION OF PRIOR ACCRUED BEN-  
 13          EFIT INTO INITIAL ACCOUNT BALANCE.—

14           “(i) IN GENERAL.—If, for purposes of  
 15          subparagraphs (B), (C), or (D), an appli-  
 16          cable plan amendment provides that an  
 17          amount will be initially credited to a par-  
 18          ticipant’s accumulation account (or its  
 19          equivalent) on the effective date of the  
 20          amendment with respect to the partici-  
 21          pant’s accrued benefit for periods before  
 22          such date, the requirements of such sub-  
 23          paragraph shall be treated as met with re-  
 24          spect to such accrued benefit if the amount  
 25          initially credited is not less than the

1 present value of the participant's accrued  
2 benefit determined by using the applicable  
3 mortality table and the lower of the appli-  
4 cable interest rate under section  
5 205(g)(3)(A), or the interest rate used to  
6 credit interest under the plan, as of such  
7 date.

8 “(ii) ADJUSTMENTS FOR CERTAIN  
9 SUBSIDIZED BENEFITS.—For purposes of  
10 subparagraph (B), if any early retirement  
11 benefit or retirement-type subsidy (within  
12 the meaning of paragraph (6)(B)(i)) is not  
13 included in the initial account balance  
14 under clause (i), the plan shall credit the  
15 accumulation account with the amount of  
16 such benefit or subsidy for the plan year in  
17 which the participant retires if, as of such  
18 time, the participant has met the age,  
19 years of service, and other requirements  
20 under the plan for entitlement to such ben-  
21 efit or subsidy.

22 “(F) REQUIREMENTS WHERE PARTICIPANT  
23 OFFERED CHOICE.—If a plan provides a partici-  
24 pant with an election described in subparagraph

1 (B)(iii)(II) or (C)(ii), the following rules shall  
2 apply:

3 “(i) NOTICE.—The plan shall not be  
4 treated as meeting the requirements of ei-  
5 ther such subparagraph unless the plan  
6 provides the participant a notice of the  
7 right to make such election which includes  
8 information (meeting such requirements as  
9 may be prescribed by the Secretary of the  
10 Treasury)—

11 “(I) by which the participant  
12 may project benefits under the for-  
13 mulas from which the participant may  
14 choose and may model the impact of  
15 any such choice, and

16 “(II) with respect to cir-  
17 cumstances under which a participant  
18 may not receive the projected accrued  
19 benefits by reason of a plan termi-  
20 nation or otherwise.

21 “(ii) SIGNIFICANT REDUCTION OF  
22 RATE OF ACCRUAL.—The plan shall pro-  
23 vide that if, during any of the first 5 plan  
24 years during which such an election is in  
25 effect, the plan adopts an amendment

1 which results in a significant reduction in  
 2 the rate of future benefit accrual (within  
 3 the meaning of section 204(h)), the ac-  
 4 crued benefit of the participant shall be de-  
 5 termined as if the participant had made  
 6 the election which resulted in the greatest  
 7 accrued benefit.

8 “(iii) BENEFITS MUST NOT BE CON-  
 9 TINGENT ON ELECTION.—The plan shall  
 10 not be treated as meeting the requirements  
 11 of either such subparagraph if any other  
 12 benefit is conditioned (directly or indi-  
 13 rectly) on such election.

14 “(G) APPLICABLE PLAN AMENDMENT.—

15 For purposes of this paragraph—

16 “(i) IN GENERAL.—The term ‘applica-  
 17 ble plan amendment’ means an amendment  
 18 to a defined benefit plan which has the ef-  
 19 fect of converting the plan to a cash bal-  
 20 ance plan.

21 “(ii) SPECIAL RULE FOR COORDI-  
 22 NATED BENEFITS.—If the benefits of 2 or  
 23 more defined benefit plans established or  
 24 maintained by an employer are coordinated  
 25 in such a manner as to have the effect of

1 the adoption of an amendment described in  
2 clause (i), the sponsor of the defined ben-  
3 efit plan or plans providing for such co-  
4 ordination shall be treated as having  
5 adopted such a plan amendment as of the  
6 date such coordination begins.

7 “(iii) MULTIPLE AMENDMENTS.—The  
8 Secretary of the Treasury shall issue regu-  
9 lations to prevent the avoidance of the pur-  
10 poses of this paragraph through the use of  
11 2 or more plan amendments rather than a  
12 single amendment.

13 “(iv) CASH BALANCE PLAN.—For pur-  
14 poses of this paragraph, the term ‘cash  
15 balance plan’ has the meaning given such  
16 term by subsection (b)(5)(C).

17 “(v) COORDINATION WITH ACCRUAL  
18 RULES.—If a plan amendment is treated  
19 as meeting the requirements of this para-  
20 graph with respect to any participant be-  
21 cause such participant is eligible to con-  
22 tinue to accrue benefits in the same man-  
23 ner as under the terms of the plan in ef-  
24 fect before the amendment, the Secretary  
25 of the Treasury shall prescribe regulations

under which the plan shall not be treated as failing to meet the requirements of subparagraph (A), (B), or (C) of section 204(b)(1) if the requirements of this paragraph are met.

“(H) APPLICATION OF CERTAIN RULES TO EARLY-RETIREMENT BENEFITS.—Rules similar to the rules of clauses (i), (ii), and (iii) of subparagraph (B) and subparagraph (C) shall apply in the case of any early retirement benefit or retirement-type subsidy (within the meaning of section 204(g)(2)(A)).”.

(2) AMENDMENT OF INTERNAL REVENUE CODE.—Section 411(d) of the Internal Revenue Code of 1986 (relating to special rules) is amended by adding at the end the following new paragraph:

“(7) TREATMENT OF CONVERSIONS TO CASH BALANCE OR OTHER HYBRID PLANS.—

“(A) IN GENERAL.—For purposes of paragraph (6), an applicable plan amendment shall be treated as reducing the accrued benefit of a participant if, under the terms of the plan as in effect after the amendment, the accrued benefit of any participant who was a participant as of the effective date of the amendment may at any



1           time be less than the accrued benefit deter-  
 2           mined under the method under subparagraph  
 3           (B), (C), or (D) which is specified in the plan  
 4           and applies uniformly to all participants. An  
 5           applicable plan amendment shall in no event be  
 6           treated as meeting the requirements of any  
 7           such subparagraph if the conversion described  
 8           in subparagraph (G)(i) is into a cash balance  
 9           plan other than a qualified cash balance plan  
 10          (as defined in subsection (b)(5)(B)).

11           “(B) NO WEARAWAY.—

12                   “(i) IN GENERAL.—The accrued ben-  
 13           efit determined under this subparagraph is  
 14           the sum of—

15                           “(I) the participant’s accrued  
 16                           benefit for years of service before the  
 17                           effective date of the amendment, de-  
 18                           termined under the terms of the plan  
 19                           as in effect before the amendment,  
 20                           plus

21                           “(II) except as provided in clause  
 22                           (ii), the participant’s accrued benefit  
 23                           for years of service after the effective  
 24                           date of the amendment, determined

1 under the terms of the plan as in ef-  
 2 fect after the amendment.

3 A similar rule shall apply in the case of  
 4 any early retirement benefit or retirement-  
 5 type subsidy (within the meaning of section  
 6 411(d)(6)(B)(i)).

7 “(ii) REQUIRED AMOUNTS FOR CER-  
 8 TAIN PERIODS.—Notwithstanding clause  
 9 (i)(II), the plan shall provide that either—

10 “(I) the accrued benefit of all  
 11 participants for each of the first 5  
 12 plan years to which the amendment  
 13 applies shall be equal to the greater of  
 14 the accrued benefit determined under  
 15 the terms of the plan as in effect both  
 16 before and after the amendment, or

17 “(II) the accrued benefit for peri-  
 18 ods after the effective date of the  
 19 amendment of all participants who, as  
 20 of the effective date of the amend-  
 21 ment, had attained the age of 40 and  
 22 had a combined age and years of serv-  
 23 ice under the plan of not less than 55  
 24 shall be determined under either of  
 25 the methods described in clause (iii)

1 which is selected by the plan and  
 2 which is specified in the amendment.

3 “(iii) APPLICABLE METHOD.—For  
 4 purposes of clause (ii)(II), the plan shall  
 5 select 1 of the following methods:

6 “(I) The accrued benefit shall be  
 7 equal to the greater of the accrued  
 8 benefit determined under the terms of  
 9 the plan as in effect both before and  
 10 after the amendment.

11 “(II) At the election of the par-  
 12 ticipant, the accrued benefit shall be  
 13 determined under the terms of the  
 14 plan as in effect either before or after  
 15 the amendment.

16 “(C) GREATER OF OLD OR NEW OR ELEC-  
 17 TION OF EITHER.—The accrued benefit deter-  
 18 mined under this subparagraph is the accrued  
 19 benefit determined under 1 of the following  
 20 methods which is selected by the plan and  
 21 which is specified in the amendment:

22 “(i) The accrued benefit shall be equal  
 23 to the greater of the accrued benefit deter-  
 24 mined under the terms of the plan as in ef-  
 25 fect both before and after the amendment.

1                   “(ii) At the election of the participant,  
 2                   the accrued benefit shall be determined  
 3                   under the terms of the plan as in effect ei-  
 4                   ther before or after the amendment.

5                   “(D) METHOD PRESCRIBED BY SEC-  
 6                   RETARY.—The accrued benefit determined  
 7                   under this subparagraph shall be determined  
 8                   under regulations prescribed by the Secretary  
 9                   which are consistent with the purposes of this  
 10                  paragraph and which may require a plan to  
 11                  provide a credit of additional amounts or in-  
 12                  creases in initial account balances in amounts  
 13                  substantially equivalent to the benefits that  
 14                  would be required to be provided to meet the  
 15                  requirements of subparagraphs (B) or (C).

16                  “(E) INCLUSION OF PRIOR ACCRUED BEN-  
 17                  EFIT INTO INITIAL ACCOUNT BALANCE.—

18                  “(i) IN GENERAL.—If, for purposes of  
 19                  subparagraphs (B), (C), or (D), an appli-  
 20                  cable plan amendment provides that an  
 21                  amount will be initially credited to a par-  
 22                  ticipant’s accumulation account (or its  
 23                  equivalent) on the effective date of the  
 24                  amendment with respect to the partici-  
 25                  pant’s accrued benefit for periods before

1 such date, the requirements of such sub-  
2 paragraph shall be treated as met with re-  
3 spect to such accrued benefit if the amount  
4 initially credited is not less than the  
5 present value of the participant's accrued  
6 benefit determined by using the applicable  
7 mortality table and the lower of the appli-  
8 cable interest rate under section  
9 417(e)(3)(A), or the interest rate used to  
10 credit interest under the plan, as of such  
11 date.

12 “(ii) ADJUSTMENTS FOR CERTAIN  
13 SUBSIDIZED BENEFITS.—For purposes of  
14 subparagraph (B), if any early retirement  
15 benefit or retirement-type subsidy (within  
16 the meaning of paragraph (6)(B)(i)) is not  
17 included in the initial account balance  
18 under clause (i), the plan shall credit the  
19 accumulation account with the amount of  
20 such benefit or subsidy for the plan year in  
21 which the participant retires if, as of such  
22 time, the participant has met the age,  
23 years of service, and other requirements  
24 under the plan for entitlement to such ben-  
25 efit or subsidy.

“(F) REQUIREMENTS WHERE PARTICIPANT  
OFFERED CHOICE.—If a plan provides a partici-  
pant with an election described in subparagraph  
(B)(iii)(II) or (C)(ii), the following rules shall  
apply:

“(i) NOTICE.—The plan shall not be  
treated as meeting the requirements of ei-  
ther such subparagraph unless the plan  
provides the participant a notice of the  
right to make such election which includes  
information (meeting such requirements as  
may be prescribed by the Secretary)—

“(I) by which the participant  
may project benefits under the for-  
mulas from which the participant may  
choose and may model the impact of  
any such choice, and

“(II) with respect to cir-  
cumstances under which a participant  
may not receive the projected accrued  
benefits by reason of a plan termi-  
nation or otherwise.

“(ii) SIGNIFICANT REDUCTION OF  
RATE OF ACCRUAL.—The plan shall pro-  
vide that if, during any of the first 5 plan

years during which such an election is in effect, the plan adopts an amendment which results in a significant reduction in the rate of future benefit accrual (within the meaning of section 4980F(e)), the accrued benefit of the participant shall be determined as if the participant had made the election which resulted in the greatest accrued benefit.

“(iii) BENEFITS MUST NOT BE CONTINGENT ON ELECTION.—The plan shall not be treated as meeting the requirements of either such subparagraph if any other benefit is conditioned (directly or indirectly) on such election.

“(G) APPLICABLE PLAN AMENDMENT.—

For purposes of this paragraph—

“(i) IN GENERAL.—The term ‘applicable plan amendment’ means an amendment to a defined benefit plan which has the effect of converting the plan to a cash balance plan.

“(ii) SPECIAL RULE FOR COORDINATED BENEFITS.—If the benefits of 2 or more defined benefit plans established or

1 maintained by an employer are coordinated  
 2 in such a manner as to have the effect of  
 3 the adoption of an amendment described in  
 4 clause (i), the sponsor of the defined ben-  
 5 efit plan or plans providing for such co-  
 6 ordination shall be treated as having  
 7 adopted such a plan amendment as of the  
 8 date such coordination begins.

9 “(iii) MULTIPLE AMENDMENTS.—The  
 10 Secretary shall issue regulations to prevent  
 11 the avoidance of the purposes of this para-  
 12 graph through the use of 2 or more plan  
 13 amendments rather than a single amend-  
 14 ment.

15 “(iv) CASH BALANCE PLAN.—For pur-  
 16 poses of this paragraph, the term ‘cash  
 17 balance plan’ has the meaning given such  
 18 term by subsection (b)(5)(C).

19 “(v) COORDINATION WITH ACCRUAL  
 20 AND NONDISCRIMINATION RULES.—If a  
 21 plan amendment is treated as meeting the  
 22 requirements of this paragraph with re-  
 23 spect to any participant because such par-  
 24 ticipant is eligible to continue to accrue  
 25 benefits in the same manner as under the



1 terms of the plan in effect before the  
2 amendment, the Secretary shall prescribe  
3 regulations under which—

4 “(I) the plan shall not be treated  
5 as failing to meet the requirements of  
6 subparagraph (A), (B), or (C) of sec-  
7 tion 411(b)(1) if the requirements of  
8 this paragraph are met, and

9 “(II) the plan shall, subject to  
10 such terms and conditions as may be  
11 provided in such regulations, not be  
12 treated as failing to meet the require-  
13 ments of section 401(a)(4) merely be-  
14 cause the plan provides any accrual or  
15 benefit which is required to be pro-  
16 vided under subparagraph (B), (C), or  
17 (D) or because only participants as of  
18 the effective date of the amendment  
19 are so eligible, except that this sub-  
20 clause shall only apply if the plan met  
21 the requirements of section 401(a)(4)  
22 under the terms of the plan as in ef-  
23 fect before the amendment.

24 “(H) APPLICATION OF CERTAIN RULES TO  
25 EARLY-RETIREMENT BENEFITS.—Rules similar

1 to the rules of clauses (i), (ii), and (iii) of sub-  
 2 paragraph (B) and subparagraph (C) shall  
 3 apply in the case of any early retirement benefit  
 4 or retirement-type subsidy (within the meaning  
 5 of section 411(d)(6)(B)(i)).”.

6 (c) ASSUMPTIONS USED IN COMPUTING PRESENT  
 7 VALUE OF ACCRUED BENEFIT.—

8 (1) AMENDMENT OF ERISA.—Section 205(g)(3)  
 9 of such Act (29 U.S.C. 1055(g)(3)), is amended—

10 (A) by striking “or (B)” in subparagraph  
 11 (A)(i) and inserting “, (B), or (C)”, and

12 (B) by adding at the end the following new  
 13 subparagraph:

14 “(C) PRESENT VALUE OF ACCRUED BEN-  
 15 EFIT UNDER CASH BALANCE PLAN.—Except as  
 16 provided in regulations, in the case of a quali-  
 17 fied cash balance plan (as defined in section  
 18 204(g)(6)(B)), the present value of the accrued  
 19 benefit of any participant shall, for purposes of  
 20 paragraphs (1) and (2), be equal to the balance  
 21 in the participant’s accumulation account (or  
 22 its equivalent) as of the time the present value  
 23 determination is being made.”.

1           (2) AMENDMENT OF INTERNAL REVENUE  
 2 CODE.—Section 417(e)(3) of such Code, is  
 3 amended—

4           (A) by striking “or (B)” in subparagraph  
 5 (A)(i) and inserting “, (B), or (C)”, and

6           (B) by adding at the end the following new  
 7 subparagraph:

8           “(C) PRESENT VALUE OF ACCRUED BEN-  
 9 EFIT UNDER CASH BALANCE PLAN.—Except as  
 10 provided in regulations, in the case of a quali-  
 11 fied cash balance plan (as defined in section  
 12 411(d)(7)(B)), the present value of the accrued  
 13 benefit of any participant shall, for purposes of  
 14 paragraphs (1) and (2), be equal to the balance  
 15 in the participant’s accumulation account (or  
 16 its equivalent) as of the time the present value  
 17 determination is being made.”

18       (d) NO INFERENCE.—Nothing in the amendments  
 19 made by this section shall be construed to infer the proper  
 20 treatment of cash balance plans or conversions to cash bal-  
 21 ance plans under sections 204(b)(1)(H) of the Employee  
 22 Retirement Income Security Act of 1974, 4(i)(1) of the  
 23 Age Discrimination in Employment Act of 1967, and  
 24 411(b)(1)(H) of the Internal Revenue Code of 1986, as  
 25 in effect before such amendments.

1 (e) EFFECTIVE DATES.—

2 (1) AGE DISCRIMINATION AND LUMP-SUM DIS-  
3 TRIBUTIONS.—

4 (A) IN GENERAL.—The amendments made  
5 by subsections (a) and (c) shall apply to periods  
6 after July 31, 2005.

7 (B) VESTING AND INTEREST CREDIT RE-  
8 QUIREMENTS.—In the case of a plan in exist-  
9 ence on July 31, 2005, the requirements of  
10 clauses (ii) and (iii) of section 411(b)(5)(B) of  
11 the Internal Revenue Code of 1986, and of  
12 clauses (ii) and (iii) of 204(b)(5)(B) of the Em-  
13 ployee Retirement Income Security Act of 1974  
14 shall, for purposes of applying the amendments  
15 made by subsections (a) and (c), apply to years  
16 beginning after December 31, 2006, unless the  
17 plan sponsor elects the application of such re-  
18 quirements for any period after July 31, 2005,  
19 and before the first year beginning after De-  
20 cember 31, 2006.

21 (C) SPECIAL RULE FOR COLLECTIVELY  
22 BARGAINED PLANS.—In the case of a plan  
23 maintained pursuant to 1 or more collective  
24 bargaining agreements between employee rep-  
25 resentatives and 1 or more employers ratified

on or before the date of the enactment of this Act, the requirements described in subparagraph (B) shall, for purposes of applying the amendments made by subsections (a) and (c), not apply to plan years beginning before—

(i) the earlier of—

(I) the date on which the last of such collective bargaining agreements terminates (determined without regard to any extension thereof on or after such date of enactment), or

(II) January 1, 2007, or

(ii) January 1, 2009.

(2) CONVERSIONS.—The amendments made by subsection (b) shall apply to plan amendments adopted after, and taking effect after, July 31, 2005, except that the plan sponsor may elect to have such amendments apply to plan amendments adopted before, and taking effect after, such date.

**SEC. 602. REGULATIONS RELATING TO MERGERS AND ACQUISITIONS.**

The Secretary of the Treasury or his delegate shall, not later than 12 months after the date of the enactment of this Act, prescribe regulations for the application of the amendments made by, and the provisions of, this title in

1 cases where the conversion of a plan to a cash balance  
 2 plan is made with respect to a group of employees who  
 3 become employees by reason of a merger, acquisition, or  
 4 similar transaction.

5 **TITLE VII—DIVERSIFICATION**  
 6 **RIGHTS AND OTHER PARTICI-**  
 7 **PANT PROTECTIONS UNDER**  
 8 **DEFINED CONTRIBUTION**  
 9 **PLANS**

10 **SEC. 701. DEFINED CONTRIBUTION PLANS REQUIRED TO**  
 11 **PROVIDE EMPLOYEES WITH FREEDOM TO IN-**  
 12 **VEST THEIR PLAN ASSETS.**

13 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

14 (1) QUALIFICATION REQUIREMENT.—Section  
 15 401(a) of the Internal Revenue Code of 1986 (relat-  
 16 ing to qualified pension, profit-sharing, and stock  
 17 bonus plans), as amended by section 115 of this Act,  
 18 is amended by inserting after paragraph (34) the  
 19 following new paragraph:

20 “(35) DIVERSIFICATION REQUIREMENTS FOR  
 21 CERTAIN DEFINED CONTRIBUTION PLANS.—

22 “(A) IN GENERAL.—A trust which is part  
 23 of an applicable defined contribution plan shall  
 24 not be treated as a qualified trust unless the

1 plan meets the diversification requirements of  
 2 subparagraphs (B), (C), and (D).

3 “(B) EMPLOYEE CONTRIBUTIONS AND  
 4 ELECTIVE DEFERRALS INVESTED IN EMPLOYER  
 5 SECURITIES OR REAL PROPERTY.—In the case  
 6 of the portion of an applicable individual’s ac-  
 7 count attributable to employee contributions  
 8 and elective deferrals which is invested in em-  
 9 ployer securities or employer real property, a  
 10 plan meets the requirements of this subpara-  
 11 graph if the applicable individual may elect to  
 12 direct the plan to divest any such securities or  
 13 real property and to reinvest an equivalent  
 14 amount in other investment options meeting the  
 15 requirements of subparagraph (D).

16 “(C) EMPLOYER CONTRIBUTIONS IN-  
 17 VESTED IN EMPLOYER SECURITIES OR REAL  
 18 PROPERTY.—In the case of the portion of the  
 19 account attributable to employer contributions  
 20 other than elective deferrals which is invested in  
 21 employer securities or employer real property, a  
 22 plan meets the requirements of this subpara-  
 23 graph if each applicable individual who—

24 “(i) is a participant who has com-  
 25 pleted at least 3 years of service, or

1                   “(ii) is a beneficiary of a participant  
 2                   described in clause (i) or of a deceased  
 3                   participant,  
 4                   may elect to direct the plan to divest any such  
 5                   securities or real property and to reinvest an  
 6                   equivalent amount in other investment options  
 7                   meeting the requirements of subparagraph (D).

8                   “(D) INVESTMENT OPTIONS.—

9                   “(i) IN GENERAL.—The requirements  
 10                  of this subparagraph are met if the plan  
 11                  offers not less than 3 investment options,  
 12                  other than employer securities or employer  
 13                  real property, to which an applicable indi-  
 14                  vidual may direct the proceeds from the di-  
 15                  vestment of employer securities or em-  
 16                  ployer real property pursuant to this para-  
 17                  graph, each of which is diversified and has  
 18                  materially different risk and return charac-  
 19                  teristics.

20                  “(ii) TREATMENT OF CERTAIN RE-  
 21                  STRICTIONS AND CONDITIONS.—

22                  “(I) TIME FOR MAKING INVEST-  
 23                  MENT CHOICES.—A plan shall not be  
 24                  treated as failing to meet the require-  
 25                  ments of this subparagraph merely be-



1           cause the plan limits the time for di-  
 2           vestment and reinvestment to peri-  
 3           odic, reasonable opportunities occur-  
 4           ring no less frequently than quarterly.

5                   “(II) CERTAIN RESTRICTIONS  
 6           AND CONDITIONS NOT ALLOWED.—  
 7           Except as provided in regulations, a  
 8           plan shall not meet the requirements  
 9           of this subparagraph if the plan im-  
 10          poses restrictions or conditions with  
 11          respect to the investment of employer  
 12          securities or employer real property  
 13          which are not imposed on the invest-  
 14          ment of other assets of the plan. This  
 15          subclause shall not apply to any re-  
 16          strictions or conditions imposed by  
 17          reason of the application of securities  
 18          laws.

19                   “(E) APPLICABLE DEFINED CONTRIBU-  
 20          TION PLAN.—For purposes of this paragraph—

21                   “(i) IN GENERAL.—The term ‘applica-  
 22          ble defined contribution plan’ means any  
 23          defined contribution plan which holds any  
 24          publicly traded employer securities.

1 “(ii) EXCEPTION FOR CERTAIN  
 2 ESOPS.—Such term does not include an  
 3 employee stock ownership plan if—

4 “(I) there are no contributions to  
 5 such plan (or earnings thereunder)  
 6 which are held within such plan and  
 7 are subject to subsection (k) or (m),  
 8 and

9 “(II) such plan is a separate plan  
 10 for purposes of section 414(l) with re-  
 11 spect to any other defined benefit plan  
 12 or defined contribution plan main-  
 13 tained by the same employer or em-  
 14 ployers.

15 “(iii) EXCEPTION FOR ONE PARTICI-  
 16 PANT PLANS.—Such term does not include  
 17 a one-participant retirement plan.

18 “(iv) ONE-PARTICIPANT RETIREMENT  
 19 PLAN.—For purposes of clause (iii), the  
 20 term ‘one-participant retirement plan’  
 21 means a retirement plan that—

22 “(I) on the first day of the plan  
 23 year covered only one individual (or  
 24 the individual and the individual’s  
 25 spouse) and the individual owned 100

1 percent of the plan sponsor (whether  
2 or not incorporated), or covered only  
3 one or more partners (or partners and  
4 their spouses) in the plan sponsor,

5 “(II) meets the minimum cov-  
6 erage requirements of section 410(b)  
7 without being combined with any  
8 other plan of the business that covers  
9 the employees of the business,

10 “(III) does not provide benefits  
11 to anyone except the individual (and  
12 the individual’s spouse) or the part-  
13 ners (and their spouses),

14 “(IV) does not cover a business  
15 that is a member of an affiliated serv-  
16 ice group, a controlled group of cor-  
17 porations, or a group of businesses  
18 under common control, and

19 “(V) does not cover a business  
20 that uses the services of leased em-  
21 ployees (within the meaning of section  
22 414(n)).

23 For purposes of this clause, the term ‘part-  
24 ner’ includes a 2-percent shareholder (as

1 defined in section 1372(b)) of an S cor-  
 2 poration.

3 “(F) CERTAIN PLANS TREATED AS HOLD-  
 4 ING PUBLICLY TRADED EMPLOYER SECURI-  
 5 TIES.—

6 “(i) IN GENERAL.—Except as pro-  
 7 vided in regulations or in clause (ii), a plan  
 8 holding employer securities which are not  
 9 publicly traded employer securities shall be  
 10 treated as holding publicly traded employer  
 11 securities if any employer corporation, or  
 12 any member of a controlled group of cor-  
 13 porations which includes such employer  
 14 corporation, has issued a class of stock  
 15 which is a publicly traded employer secu-  
 16 rity.

17 “(ii) EXCEPTION FOR CERTAIN CON-  
 18 TROLLED GROUPS WITH PUBLICLY TRAD-  
 19 ED SECURITIES.—Clause (i) shall not  
 20 apply to a plan if—

21 “(I) no employer corporation, or  
 22 parent corporation of an employer  
 23 corporation, has issued any publicly  
 24 traded employer security, and

1                   “(II) no employer corporation, or  
 2                   parent corporation of an employer  
 3                   corporation, has issued any special  
 4                   class of stock which grants particular  
 5                   rights to, or bears particular risks for,  
 6                   the holder or issuer with respect to  
 7                   any corporation described in clause (i)  
 8                   which has issued any publicly traded  
 9                   employer security.

10                   “(iii) DEFINITIONS.—For purposes of  
 11                   this subparagraph, the term—

12                   “(I) ‘controlled group of corpora-  
 13                   tions’ has the meaning given such  
 14                   term by section 1563(a), except that  
 15                   ‘50 percent’ shall be substituted for  
 16                   ‘80 percent’ each place it appears,

17                   “(II) ‘employer corporation’  
 18                   means a corporation which is an em-  
 19                   ployer maintaining the plan, and

20                   “(III) ‘parent corporation’ has  
 21                   the meaning given such term by sec-  
 22                   tion 424(e).

23                   “(G) OTHER DEFINITIONS.—For purposes  
 24                   of this paragraph—

1 “(i) APPLICABLE INDIVIDUAL.—The  
2 term ‘applicable individual’ means—

3 “(I) any participant in the plan,  
4 and

5 “(II) any beneficiary who has an  
6 account under the plan with respect to  
7 which the beneficiary is entitled to ex-  
8 ercise the rights of a participant.

9 “(ii) ELECTIVE DEFERRAL.—The  
10 term ‘elective deferral’ means an employer  
11 contribution described in section  
12 402(g)(3)(A).

13 “(iii) EMPLOYER SECURITY.—The  
14 term ‘employer security’ has the meaning  
15 given such term by section 407(d)(1) of  
16 the Employee Retirement Income Security  
17 Act of 1974.

18 “(iv) EMPLOYER REAL PROPERTY.—  
19 The term ‘employer real property’ has the  
20 meaning given such term by section  
21 407(d)(2) of the Employee Retirement In-  
22 come Security Act of 1974.

23 “(v) EMPLOYEE STOCK OWNERSHIP  
24 PLAN.—The term ‘employee stock owner-

1 ship plan’ has the meaning given such  
 2 term by section 4975(e)(7).

3 “(vi) PUBLICLY TRADED EMPLOYER  
 4 SECURITIES.—The term ‘publicly traded  
 5 employer securities’ means employer secu-  
 6 rities which are readily tradable on an es-  
 7 tablished securities market.

8 “(vii) YEAR OF SERVICE.—The term  
 9 ‘year of service’ has the meaning given  
 10 such term by section 411(a)(5).

11 “(H) TRANSITION RULE FOR SECURITIES  
 12 OR REAL PROPERTY ATTRIBUTABLE TO EM-  
 13 PLOYER CONTRIBUTIONS.—

14 “(i) RULES PHASED IN OVER 3  
 15 YEARS.—

16 “(I) IN GENERAL.—In the case  
 17 of the portion of an account to which  
 18 subparagraph (C) applies and which  
 19 consists of employer securities or em-  
 20 ployer real property acquired in a plan  
 21 year beginning before January 1,  
 22 2006, subparagraph (C) shall only  
 23 apply to the applicable percentage of  
 24 such securities or real property. This  
 25 subparagraph shall be applied sepa-

1                   rately with respect to each class of se-  
2                   curities and employer real property.

3                   “(II) EXCEPTION FOR CERTAIN  
4                   PARTICIPANTS AGED 55 OR OVER.—  
5                   Subclause (I) shall not apply to an  
6                   applicable individual who is a partici-  
7                   pant who has attained age 55 and  
8                   completed at least 3 years of service  
9                   before the first plan year beginning  
10                  after December 31, 2005.

11                  “(ii) APPLICABLE PERCENTAGE.—For  
12                  purposes of clause (i), the applicable per-  
13                  centage shall be determined as follows:

<b>Plan year to which subparagraph (C) applies:</b>	<b>The applicable percentage is:</b>
1st .....	33
2d .....	66
3d and following .....	100.”.

14                  (2) CONFORMING AMENDMENTS.—

15                  (A) Section 401(a)(28)(B) of such Code  
16                  (relating to additional requirements relating to  
17                  employee stock ownership plans) is amended by  
18                  adding at the end the following new clause:

19                  “(v) EXCEPTION.—This subparagraph  
20                  shall not apply to an applicable defined  
21                  contribution plan (as defined in paragraph  
22                  (35)(E)).”



1           (B) Section 409(h)(7) of such Code is  
 2           amended by inserting “or subparagraph (B) or  
 3           (C) of section 401(a)(35)” before the period at  
 4           the end.

5           (C) Section 4980(c)(3)(A) of such Code is  
 6           amended by striking “if—” and all that follows  
 7           and inserting “if the requirements of subpara-  
 8           graphs (B), (C), and (D) are met.”

9           (b) AMENDMENTS OF ERISA.—

10           (1) IN GENERAL.—Section 204 of the Employee  
 11           Retirement Income Security Act of 1974 (29 U.S.C.  
 12           1054) is amended by redesignating subsection (j) as  
 13           subsection (k) and by inserting after subsection (i)  
 14           the following new subsection:

15           “(j) DIVERSIFICATION REQUIREMENTS FOR CERTAIN  
 16           INDIVIDUAL ACCOUNT PLANS.—

17           “(1) IN GENERAL.—An applicable individual ac-  
 18           count plan shall meet the diversification require-  
 19           ments of paragraphs (2), (3), and (4).

20           “(2) EMPLOYEE CONTRIBUTIONS AND ELEC-  
 21           TIVE DEFERRALS INVESTED IN EMPLOYER SECURI-  
 22           TIES OR REAL PROPERTY.—In the case of the por-  
 23           tion of an applicable individual’s account attrib-  
 24           utable to employee contributions and elective defer-  
 25           rals which is invested in employer securities or em-

1        ployer real property, a plan meets the requirements  
 2        of this paragraph if the applicable individual may  
 3        elect to direct the plan to divest any such securities  
 4        or real property and to reinvest an equivalent  
 5        amount in other investment options meeting the re-  
 6        quirements of paragraph (4).

7            “(3) EMPLOYER CONTRIBUTIONS INVESTED IN  
 8        EMPLOYER SECURITIES OR REAL PROPERTY.—In the  
 9        case of the portion of the account attributable to  
 10       employer contributions other than elective deferrals  
 11       which is invested in employer securities or employer  
 12       real property, a plan meets the requirements of this  
 13       paragraph if each applicable individual who—

14            “(A) is a participant who has completed at  
 15        least 3 years of service, or

16            “(B) is a beneficiary of a participant de-  
 17        scribed in subparagraph (A) or of a deceased  
 18        participant,

19        may elect to direct the plan to divest any such secu-  
 20        rities or real property and to reinvest an equivalent  
 21        amount in other investment options meeting the re-  
 22        quirements of paragraph (4).

23            “(4) INVESTMENT OPTIONS.—

24            “(A) IN GENERAL.—The requirements of  
 25        this paragraph are met if the plan offers not

less than 3 investment options, other than employer securities or employer real property, to which an applicable individual may direct the proceeds from the divestment of employer securities or employer real property pursuant to this subsection, each of which is diversified and has materially different risk and return characteristics.

“(B) TREATMENT OF CERTAIN RESTRICTIONS AND CONDITIONS.—

“(i) TIME FOR MAKING INVESTMENT CHOICES.—A plan shall not be treated as failing to meet the requirements of this paragraph merely because the plan limits the time for divestment and reinvestment to periodic, reasonable opportunities occurring no less frequently than quarterly.

“(ii) CERTAIN RESTRICTIONS AND CONDITIONS NOT ALLOWED.—Except as provided in regulations, a plan shall not meet the requirements of this paragraph if the plan imposes restrictions or conditions with respect to the investment of employer securities or employer real property which are not imposed on the investment of other

1           assets of the plan. This subparagraph shall  
 2           not apply to any restrictions or conditions  
 3           imposed by reason of the application of se-  
 4           curities laws.

5           “(5)    APPLICABLE    INDIVIDUAL    ACCOUNT  
 6   PLAN.—For purposes of this subsection—

7           “(A) IN GENERAL.—The term ‘applicable  
 8           individual account plan’ means any individual  
 9           account plan (as defined in section 3(34)) which  
 10          holds any publicly traded employer securities.

11          “(B) EXCEPTION FOR CERTAIN ESOPS.—  
 12          Such term does not include an employee stock  
 13          ownership plan if—

14               “(i) there are no contributions to such  
 15               plan (or earnings thereunder) which are  
 16               held within such plan and are subject to  
 17               subsection (k) or (m) of section 401 of the  
 18               Internal Revenue Code of 1986, and

19               “(ii) such plan is a separate plan (for  
 20               purposes of section 414(l) of such Code)  
 21               with respect to any other defined benefit  
 22               plan or individual account plan maintained  
 23               by the same employer or employers.

24          “(C) EXCEPTION FOR ONE PARTICIPANT  
 25   PLANS.—Such term shall not include a one-par-

1            participant retirement plan (as defined in section  
2            101(i)(8)(B)).

3            “(D) CERTAIN PLANS TREATED AS HOLD-  
4            ING PUBLICLY TRADED EMPLOYER SECURI-  
5            TIES.—

6            “(i) IN GENERAL.—Except as pro-  
7            vided in regulations or in clause (ii), a plan  
8            holding employer securities which are not  
9            publicly traded employer securities shall be  
10           treated as holding publicly traded employer  
11           securities if any employer corporation, or  
12           any member of a controlled group of cor-  
13           porations which includes such employer  
14           corporation, has issued a class of stock  
15           which is a publicly traded employer secu-  
16           rity.

17           “(ii) EXCEPTION FOR CERTAIN CON-  
18           TROLLED GROUPS WITH PUBLICLY TRAD-  
19           ED SECURITIES.—Clause (i) shall not  
20           apply to a plan if—

21           “(I) no employer corporation, or  
22           parent corporation of an employer  
23           corporation, has issued any publicly  
24           traded employer security, and

1                   “(II) no employer corporation, or  
 2                   parent corporation of an employer  
 3                   corporation, has issued any special  
 4                   class of stock which grants particular  
 5                   rights to, or bears particular risks for,  
 6                   the holder or issuer with respect to  
 7                   any corporation described in clause (i)  
 8                   which has issued any publicly traded  
 9                   employer security.

10                   “(iii) DEFINITIONS.—For purposes of  
 11                   this subparagraph, the term—

12                   “(I) ‘controlled group of corpora-  
 13                   tions’ has the meaning given such  
 14                   term by section 1563(a) of the Inter-  
 15                   nal Revenue Code of 1986, except  
 16                   that ‘50 percent’ shall be substituted  
 17                   for ‘80 percent’ each place it appears,

18                   “(II) ‘employer corporation’  
 19                   means a corporation which is an em-  
 20                   ployer maintaining the plan, and

21                   “(III) ‘parent corporation’ has  
 22                   the meaning given such term by sec-  
 23                   tion 424(e) of such Code.

24                   “(6) OTHER DEFINITIONS.—For purposes of  
 25                   this paragraph—

1           “(A) APPLICABLE INDIVIDUAL.—The term  
2           ‘applicable individual’ means—

3                   “(i) any participant in the plan, and

4                   “(ii) any beneficiary who has an ac-  
5                   count under the plan with respect to which  
6                   the beneficiary is entitled to exercise the  
7                   rights of a participant.

8           “(B) ELECTIVE DEFERRAL.—The term  
9           ‘elective deferral’ means an employer contribu-  
10          tion described in section 402(g)(3)(A) of the In-  
11          ternal Revenue Code of 1986.

12          “(C) EMPLOYER SECURITY.—The term  
13          ‘employer security’ has the meaning given such  
14          term by section 407(d)(1).

15          “(D) EMPLOYER REAL PROPERTY.—The  
16          term ‘employer real property’ has the meaning  
17          given such term by section 407(d)(2).

18          “(E) EMPLOYEE STOCK OWNERSHIP  
19          PLAN.—The term ‘employee stock ownership  
20          plan’ has the meaning given such term by sec-  
21          tion 4975(e)(7) of such Code.

22          “(F) PUBLICLY TRADED EMPLOYER SECU-  
23          RITIES.—The term ‘publicly traded employer  
24          securities’ means employer securities which are

1 readily tradable on an established securities  
2 market.

3 “(G) YEAR OF SERVICE.—The term ‘year  
4 of service’ has the meaning given such term by  
5 section 203(b)(2).

6 “(7) TRANSITION RULE FOR SECURITIES OR  
7 REAL PROPERTY ATTRIBUTABLE TO EMPLOYER CON-  
8 TRIBUTIONS.—

9 “(A) RULES PHASED IN OVER 3 YEARS.—

10 “(i) IN GENERAL.—In the case of the  
11 portion of an account to which paragraph  
12 (3) applies and which consists of employer  
13 securities or employer real property ac-  
14 quired in a plan year beginning before  
15 January 1, 2006, paragraph (3) shall only  
16 apply to the applicable percentage of such  
17 securities or real property. This subpara-  
18 graph shall be applied separately with re-  
19 spect to each class of securities and em-  
20 ployer real property.

21 “(ii) EXCEPTION FOR CERTAIN PAR-  
22 TICIPANTS AGED 55 OR OVER.—Clause (i)  
23 shall not apply to an applicable individual  
24 who is a participant who has attained age  
25 55 and completed at least 3 years of serv-



1                   ice before the first plan year beginning  
2                   after December 31, 2005.

3                   “(B)    APPLICABLE    PERCENTAGE.—For  
4                   purposes of subparagraph (A), the applicable  
5                   percentage shall be determined as follows:

<b>Plan year to which paragraph (3) applies:</b>	<b>The applicable percentage is:</b>
1st .....	33
2d .....	66
3d and following .....	100.”.

6                   (2)    CONFORMING    AMENDMENT.—Section  
7                   407(b)(3) of such Act (29 U.S.C. 1107(b)(3)) is  
8                   amended by adding at the end the following:

**“(D) For diversification requirements for quali-  
fying employer securities and qualifying real prop-  
erty held in certain individual account plans, see  
section 204(j).”**

9                   (c) EFFECTIVE DATES.—

10                  (1) IN GENERAL.—Except as provided in para-  
11                  graphs (2) and (3), the amendments made by this  
12                  section shall apply to plan years beginning after De-  
13                  cember 31, 2005.

14                  (2) SPECIAL RULE FOR COLLECTIVELY BAR-  
15                  GAINED AGREEMENTS.—In the case of a plan main-  
16                  tained pursuant to 1 or more collective bargaining  
17                  agreements between employee representatives and 1  
18                  or more employers ratified on or before the date of  
19                  the enactment of this Act, paragraph (1) shall be  
20                  applied to benefits pursuant to, and individuals cov-

ered by, any such agreement by substituting for  
 “December 31, 2005” the earlier of—

(A) the later of—

(i) December 31, 2006, or

(ii) the date on which the last of such  
 collective bargaining agreements termi-  
 nates (determined without regard to any  
 extension thereof after such date of enact-  
 ment), or

(B) December 31, 2007.

(3) SPECIAL RULE FOR CERTAIN EMPLOYER SE-  
 CURITIES HELD IN AN ESOP.—

(A) IN GENERAL.—In the case of employer  
 securities to which this paragraph applies, the  
 amendments made by this section shall apply to  
 plan years beginning after the earlier of—

(i) December 31, 2006, or

(ii) the first date on which the fair  
 market value of such securities exceeds the  
 guaranteed minimum value described in  
 subparagraph (B)(ii).

(B) APPLICABLE SECURITIES.—This para-  
 graph shall apply to employer securities which  
 are attributable to employer contributions other

than elective deferrals, and which, on September 17, 2003—

(i) consist of preferred stock, and

(ii) are within an employee stock ownership plan (as defined in section 4975(e)(7) of the Internal Revenue Code of 1986), the terms of which provide that the value of the securities cannot be less than the guaranteed minimum value specified by the plan on such date.

(C) COORDINATION WITH TRANSITION RULE.—In applying section 401(a)(35)(H) of the Internal Revenue Code of 1986 and section 204(j)(7) of the Employee Retirement Income Security Act of 1974 (as added by this section) to employer securities to which this paragraph applies, the applicable percentage shall be determined without regard to this paragraph.

**SEC. 702. NOTICE OF FREEDOM TO DIVEST EMPLOYER SECURITIES OR REAL PROPERTY.**

(a) IN GENERAL.—Section 101 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021), as amended by this Act, is amended by redesignating subsection (m) as subsection (n) and by inserting after subsection (l) the following:

1       “(m) NOTICE OF RIGHT TO DIVEST.—Not later than  
 2 30 days before the first date on which an applicable indi-  
 3 vidual of an applicable individual account plan is eligible  
 4 to exercise the right under section 204(j) to direct the pro-  
 5 ceeds from the divestment of employer securities or em-  
 6 ployer real property with respect to any type of contribu-  
 7 tion, the administrator shall provide to such individual a  
 8 notice—

9               “(1) setting forth such right under such sec-  
 10 tion, and

11               “(2) describing the importance of diversifying  
 12 the investment of retirement account assets.

13 The notice required by this subsection shall be written in  
 14 a manner calculated to be understood by the average plan  
 15 participant and may be delivered in written, electronic, or  
 16 other appropriate form to the extent that such form is rea-  
 17 sonably accessible to the recipient.”

18       (b) PENALTIES.—Section 502(c)(7) of the Employee  
 19 Retirement Income Security Act of 1974 (29 U.S.C.  
 20 1132(c)(7)) is amended by striking “section 101(i)” and  
 21 inserting “subsection (i) or (m) of section 101”.

22       (c) MODEL NOTICE.—The Secretary of the Treasury  
 23 shall, within 180 days after the date of the enactment of  
 24 this subsection, prescribe a model notice for purposes of

1 satisfying the requirements of the amendments made by  
 2 this section.

3 (d) EFFECTIVE DATES.—

4 (1) IN GENERAL.—The amendments made by  
 5 this section shall apply to plan years beginning after  
 6 December 31, 2005.

7 (2) TRANSITION RULE.—If notice under section  
 8 101(m) of the Employee Retirement Income Secu-  
 9 rity Act of 1974 (as added by this section) would  
 10 otherwise be required to be provided before the 90th  
 11 day after the date of the enactment of this Act, such  
 12 notice shall not be required to be provided until such  
 13 90th day.

14 **SEC. 703. PERIODIC PENSION BENEFIT STATEMENTS.**

15 (a) AMENDMENTS OF ERISA.—

16 (1) IN GENERAL.—Section 105(a) of the Em-  
 17 ployee Retirement Income Security Act of 1974 (29  
 18 U.S.C. 1025(a)) is amended to read as follows:

19 “(a) REQUIREMENTS TO PROVIDE PENSION BEN-  
 20 EFIT STATEMENTS.—

21 “(1) REQUIREMENTS.—

22 “(A) INDIVIDUAL ACCOUNT PLAN.—The  
 23 administrator of an individual account plan  
 24 (other than a one-participant retirement plan

1 described in section 101(i)(8)(B)) shall furnish  
 2 a pension benefit statement—

3 “(i) at least once each calendar quar-  
 4 ter to a participant or beneficiary who has  
 5 the right to direct the investment of assets  
 6 in his or her account under the plan,

7 “(ii) at least once each calendar year  
 8 to a participant or beneficiary who has his  
 9 or her own account under the plan but  
 10 does not have the right to direct the invest-  
 11 ment of assets in that account, and

12 “(iii) upon written request to a plan  
 13 beneficiary not described in clause (i) or  
 14 (ii).

15 “(B) DEFINED BENEFIT PLAN.—The ad-  
 16 ministrator of a defined benefit plan (other  
 17 than a one-participant retirement plan de-  
 18 scribed in section 101(i)(8)(B)) shall furnish a  
 19 pension benefit statement—

20 “(i) at least once every 3 years to  
 21 each participant with a nonforfeitable ac-  
 22 crued benefit and who is employed by the  
 23 employer maintaining the plan at the time  
 24 the statement is to be furnished, and

1 “(ii) to a participant or beneficiary of  
2 the plan upon written request.

3 Information furnished under clause (i) to a par-  
4 ticipant may be based on reasonable estimates  
5 determined under regulations prescribed by the  
6 Secretary, in consultation with the Pension  
7 Benefit Guaranty Corporation.

8 “(2) STATEMENTS.—

9 “(A) IN GENERAL.—A pension benefit  
10 statement under paragraph (1)—

11 “(i) shall indicate, on the basis of the  
12 latest available information—

13 “(I) the total benefits accrued,  
14 and

15 “(II) the nonforfeitable pension  
16 benefits, if any, which have accrued,  
17 or the earliest date on which benefits  
18 will become nonforfeitable,

19 “(ii) shall include an explanation of  
20 any permitted disparity under section  
21 401(l) of the Internal Revenue Code of  
22 1986 or any floor-offset arrangement that  
23 may be applied in determining any accrued  
24 benefits described in clause (i),

1 “(iii) shall be written in a manner cal-  
 2 culated to be understood by the average  
 3 plan participant, and

4 “(iv) may be delivered in written, elec-  
 5 tronic, or other appropriate form to the ex-  
 6 tent such form is reasonably accessible to  
 7 the participant or beneficiary.

8 “(B) ADDITIONAL INFORMATION.—In the  
 9 case of an individual account plan, any pension  
 10 benefit statement under clause (i) or (ii) of  
 11 paragraph (1)(A) shall include—

12 “(i) the value of each investment to  
 13 which assets in the individual account have  
 14 been allocated, determined as of the most  
 15 recent valuation date under the plan, in-  
 16 cluding the value of any assets held in the  
 17 form of employer securities or employer  
 18 real property, without regard to whether  
 19 such securities or real property were con-  
 20 tributed by the plan sponsor or acquired at  
 21 the direction of the plan or of the partici-  
 22 pant or beneficiary, and

23 “(ii) in the case of a pension benefit  
 24 statement under paragraph (1)(A)(i)—



1 “(I) an explanation of any limita-  
 2 tions or restrictions on any right of  
 3 the participant or beneficiary under  
 4 the plan to direct an investment, and

5 “(II) a notice that investments in  
 6 any individual account may not be  
 7 adequately diversified if the value of  
 8 any investment in the account exceeds  
 9 20 percent of the fair market value of  
 10 all investments in the account.

11 “(C) ALTERNATIVE NOTICE.—The require-  
 12 ments of subparagraph (A)(i)(II) are met if, at  
 13 least annually and in accordance with require-  
 14 ments of the Secretary, the plan—

15 “(i) updates the information described  
 16 in such paragraph which is provided in the  
 17 pension benefit statement, or

18 “(ii) provides in a separate statement  
 19 such information as is necessary to enable  
 20 a participant or beneficiary to determine  
 21 their nonforfeitable vested benefits.

22 “(3) DEFINED BENEFIT PLANS.—

23 “(A) ALTERNATIVE NOTICE.—In the case  
 24 of a defined benefit plan, the requirements of  
 25 paragraph (1)(B)(i) shall be treated as met

with respect to a participant if at least once each year the administrator provides to the participant notice of the availability of the pension benefit statement and the ways in which the participant may obtain such statement. Such notice may be delivered in written, electronic, or other appropriate form to the extent such form is reasonably accessible to the participant.

“(B) YEARS IN WHICH NO BENEFITS ACCRUE.—The Secretary may provide that years in which no employee or former employee benefits (within the meaning of section 410(b) of the Internal Revenue Code of 1986) under the plan need not be taken into account in determining the 3-year period under paragraph (1)(B)(i).”

(2) CONFORMING AMENDMENTS.—

(A) Section 105 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1025) is amended by striking subsection (d).

(B) Section 105(b) of such Act (29 U.S.C. 1025(b)) is amended to read as follows:

“(b) LIMITATION ON NUMBER OF STATEMENTS.—In no case shall a participant or beneficiary of a plan be entitled to more than 1 statement described in subparagraph

1 (A)(iii) or (B)(ii) of subsection (a)(1), whichever is appli-  
 2 cable, in any 12-month period.”

3 (C) Section 502(c)(1) of such Act (29  
 4 U.S.C. 1132(c)(1)) is amended by striking “or  
 5 section 101(f)” and inserting “section 101(f),  
 6 or section 105(a)”.

7 (b) MODEL STATEMENTS.—

8 (1) IN GENERAL.—The Secretary of Labor  
 9 shall, within 180 days after the date of the enact-  
 10 ment of this section, develop 1 or more model benefit  
 11 statements that are written in a manner calculated  
 12 to be understood by the average plan participant and  
 13 that may be used by plan administrators in com-  
 14 plying with the requirements of section 105 of the  
 15 Employee Retirement Income Security Act of 1974.

16 (2) INTERIM FINAL RULES.—The Secretary of  
 17 Labor may promulgate any interim final rules as the  
 18 Secretary determines appropriate to carry out the  
 19 provisions of this subsection.

20 (d) EFFECTIVE DATE.—

21 (1) IN GENERAL.—The amendments made by  
 22 this section shall apply to plan years beginning after  
 23 December 31, 2006.

24 (2) SPECIAL RULE FOR COLLECTIVELY BAR-  
 25 GAINED AGREEMENTS.—In the case of a plan main-

1       tained pursuant to 1 or more collective bargaining  
 2       agreements between employee representatives and 1  
 3       or more employers ratified on or before the date of  
 4       the enactment of this Act, paragraph (1) shall be  
 5       applied to benefits pursuant to, and individuals cov-  
 6       ered by, any such agreement by substituting for  
 7       “December 31, 2006” the earlier of—

8               (A) the later of—

9                   (i) December 31, 2007, or

10                  (ii) the date on which the last of such  
 11               collective bargaining agreements termi-  
 12               nates (determined without regard to any  
 13               extension thereof after such date of enact-  
 14               ment), or

15               (B) December 31, 2008.

16 **SEC. 704. NOTICE TO PARTICIPANTS OR BENEFICIARIES OF**  
 17 **BLACKOUT PERIODS.**

18       (a) AMENDMENTS OF ERISA.—

19               (1) IN GENERAL.—Section 101(i) of the Em-  
 20       ployee Retirement Income Security Act of 1974 (29  
 21       U.S.C. 1021(i)) is amended—

22               (A) by striking clauses (i) through (iv) of  
 23       paragraph (8)(B) and inserting:

24                   “(i) on the first day of the plan  
 25       year—

1 “(I) covered only one individual  
 2 (or the individual and the individual’s  
 3 spouse) and the individual (or the in-  
 4 dividual and the individual’s spouse)  
 5 owned 100 percent of the plan spon-  
 6 sor (whether or not incorporated), or

7 “(II) covered only one or more  
 8 partners (or partners and their  
 9 spouses) in the plan sponsor, and”,  
 10 and

11 (B) in paragraph (8)(B), by redesignating  
 12 clause (v) as clause (ii).

13 (2) EFFECTIVE DATE.—The amendments made  
 14 by this subsection shall take effect as if included in  
 15 the provisions of section 306 of Public Law 107–204  
 16 (116 Stat. 745 et seq.).

17 **SEC. 705. ALLOWANCE OF, AND CREDIT FOR, ADDITIONAL**  
 18 **IRA PAYMENTS IN CERTAIN BANKRUPTCY**  
 19 **CASES.**

20 (a) ALLOWANCE OF CONTRIBUTIONS.—Section  
 21 219(b)(5) of the Internal Revenue Code of 1986 (relating  
 22 to deductible amount) is amended by redesignating sub-  
 23 paragraph (C) as subparagraph (D) and by inserting after  
 24 subparagraph (B) the following new subparagraph:

1                   “(C) CATCHUP CONTRIBUTIONS FOR CER-  
2                   TAIN INDIVIDUALS.—

3                   “(i) IN GENERAL.—In the case of an  
4                   applicable individual who elects to make a  
5                   qualified retirement contribution in addi-  
6                   tion to the deductible amount determined  
7                   under subparagraph (A)—

8                   “(I) the deductible amount for  
9                   any taxable year shall be increased by  
10                  an amount equal to 3 times the appli-  
11                  cable amount determined under sub-  
12                  paragraph (B) for such taxable year,  
13                  and

14                  “(II) subparagraph (B) shall not  
15                  apply.

16                  “(ii) APPLICABLE INDIVIDUAL.—For  
17                  purposes of this subparagraph, the term  
18                  ‘applicable individual’ means, with respect  
19                  to any taxable year, any individual who  
20                  was a qualified participant in a qualified  
21                  cash or deferred arrangement (as defined  
22                  in section 401(k)) of an employer described  
23                  in clause (iii) under which the employer  
24                  matched at least 50 percent of the employ-

1 ee's contributions to such arrangement  
2 with stock of such employer.

3 “(iii) EMPLOYER DESCRIBED.—An  
4 employer is described in this clause if, in  
5 any taxable year preceding the taxable year  
6 described in clause (ii)—

7 “(I) such employer (or any con-  
8 trolling corporation of such employer)  
9 was a debtor in a case under title 11  
10 of the United States Code, or similar  
11 Federal or State law, and

12 “(II) such employer (or any other  
13 person) was subject to an indictment  
14 or conviction resulting from business  
15 transactions related to such case.

16 “(iv) QUALIFIED PARTICIPANT.—For  
17 purposes of clause (ii), the term ‘qualified  
18 participant’ means any applicable indi-  
19 vidual who was a participant in the cash or  
20 deferred arrangement described in clause  
21 (i) on the date that is 6 months before the  
22 filing of the case described in clause (iii).

23 “(v) TERMINATION.—This subpara-  
24 graph shall not apply to taxable years be-  
25 ginning after December 31, 2009.”

1 (b) SAVER’S CREDIT EXPANDED TO INCLUDE  
 2 CATCHUP CONTRIBUTIONS.—

3 (1) IN GENERAL.—Section 25B of the Internal  
 4 Revenue Code of 1986 (relating to credit for elective  
 5 deferrals and IRA contributions by certain individ-  
 6 uals) is amended by redesignating subsection (h) as  
 7 subsection (i) and by inserting after subsection (g)  
 8 the following new subsection:

9 “(h) ADDITIONAL CREDIT FOR CERTAIN CATCHUP  
 10 CONTRIBUTIONS.—

11 “(1) IN GENERAL.—In the case of an eligible  
 12 individual who is an applicable individual under sec-  
 13 tion 219(b)(5)(C) for any taxable year, the amount  
 14 of the credit allowable under subsection (a) for the  
 15 taxable year shall be increased by 50 percent of so  
 16 much of the qualified retirement contributions (as  
 17 defined in section 219(e)) of the individual for the  
 18 taxable year as exceeds the deductible amount for  
 19 the taxable year under section 219(b)(5) (without  
 20 regard to subparagraphs (B) and (C) thereof).

21 “(2) COORDINATION WITH OTHER CONTRIBU-  
 22 TIONS.—For purposes of this section—

23 “(A) any contribution to which this sub-  
 24 section applies shall not be taken into account  
 25 in determining the amount of the credit allow-



1           able under subsection (a) without regard to this  
2           subsection, and

3           “(B) in applying any reduction in qualified  
4           retirement savings contributions under sub-  
5           section (d)(2), the reduction shall be applied  
6           first to qualified retirement savings contribu-  
7           tions other than contributions to which this  
8           subsection applies.”.

9           (2) EXTENSION OF TERMINATION DATE FOR  
10          CATCHUP CREDIT.—Section 25B(i) of such Code, as  
11          redesignated by paragraph (1), is amended by in-  
12          serting “(December 31, 2007, in the case of the por-  
13          tion of the credit allowed under subsection (h))”  
14          after “2006”.

15          (c) EFFECTIVE DATE.—The amendments made by  
16          this section shall apply to taxable years beginning after  
17          December 31, 2004.

18   **SEC. 706. INAPPLICABILITY OF RELIEF FROM FIDUCIARY**  
19                           **LIABILITY DURING SUSPENSION OF ABILITY**  
20                           **OF PARTICIPANT OR BENEFICIARY TO DI-**  
21                           **RECT INVESTMENTS.**

22          (a) IN GENERAL.—Section 404(c)(1) of the Em-  
23          ployee Retirement Income Security Act of 1974 (29  
24          U.S.C. 1104(c)(1)) is amended—

1           (1) by redesignating subparagraphs (A) and  
 2           (B) as clauses (i) and (ii), respectively, and by in-  
 3           serting “(A)” after “(c)(1)”,

4           (2) in subparagraph (A)(ii) (as redesignated by  
 5           paragraph (1)), by inserting before the period the  
 6           following: “, except that this clause shall not apply  
 7           in connection with such participant or beneficiary  
 8           for any blackout period during which the ability of  
 9           such participant or beneficiary to direct the invest-  
 10          ment of the assets in his or her account is sus-  
 11          pended by a plan sponsor or fiduciary”, and

12          (3) by adding at the end the following new sub-  
 13          paragraphs:

14          “(B)(i) If a person referred to in subparagraph  
 15          (A)(ii) meets the requirements of this title in connection  
 16          with authorizing and implementing the blackout period,  
 17          any person who is otherwise a fiduciary shall not be liable  
 18          under this title for any loss occurring during such period  
 19          as a result of any exercise by the participant or beneficiary  
 20          of control over assets in his or her account before the pe-  
 21          riod. Matters to be considered in determining whether  
 22          such person has satisfied the requirements of this title in-  
 23          clude, but are not limited to, whether such person—

24                 “(I) has considered the reasonableness of the  
 25                 expected blackout period,

1           “(II) has provided the notice required under  
2           section 101(i)(1), and

3           “(III) has acted in accordance with the require-  
4           ments of subsection (a) in determining whether to  
5           enter into the blackout period.

6           “(ii) For purposes of this subsection, if a blackout  
7           period arises in connection with a change in the invest-  
8           ment options offered under the plan, a participant or bene-  
9           ficiary shall be deemed to have exercised control over the  
10          assets in his or her account prior to the blackout period  
11          if, after notice of the change in investment options is given  
12          to such participant or beneficiary, assets in the account  
13          of the participant or beneficiary are transferred—

14               “(I) to plan investment options in accordance  
15               with the affirmative election of the participant or  
16               beneficiary; or

17               “(II) in the absence of such an election and in  
18               the case in which fiduciary relief was provided under  
19               this subsection for the prior investment options, to  
20               plan investment options in the manner set forth in  
21               such notice.

22           “(C) For purposes of this paragraph, the term ‘black-  
23          out period’ has the meaning given such term by section  
24          101(i)(7).”

1       (b) GUIDANCE.—Not later than 180 days after the  
2 date of enactment of this Act, the Secretary of Labor, in  
3 consultation with the Secretary of the Treasury, shall  
4 issue interim final regulations providing guidance, includ-  
5 ing safe harbors, on how plan sponsors or any other af-  
6 fected fiduciaries can satisfy their fiduciary responsibilities  
7 during any blackout period during which the ability of a  
8 participant or beneficiary to direct the investment of as-  
9 sets in his or her individual account is suspended.

10       (c) EFFECTIVE DATE.—

11           (1) IN GENERAL.—The amendments made by  
12 this section shall apply to plan years beginning after  
13 December 31, 2005.

14           (2) SPECIAL RULE FOR COLLECTIVELY BAR-  
15 GAINED AGREEMENTS.—In the case of a plan main-  
16 tained pursuant to 1 or more collective bargaining  
17 agreements between employee representatives and 1  
18 or more employers ratified on or before the date of  
19 the enactment of this Act, paragraph (1) shall be  
20 applied to benefits pursuant to, and individuals cov-  
21 ered by, any such agreement by substituting for  
22 “December 31, 2005” the earlier of—

23                   (A) the later of—

24                           (i) December 31, 2006, or

1 (ii) the date on which the last of such  
 2 collective bargaining agreements termi-  
 3 nates (determined without regard to any  
 4 extension thereof after such date of enact-  
 5 ment), or

6 (B) December 31, 2007.

7 **SEC. 707. INCREASE IN MAXIMUM BOND AMOUNT.**

8 (a) IN GENERAL.—Section 412(a) of the Employee  
 9 Retirement Income Security Act of 1974 (29 U.S.C. 1112)  
 10 is amended by adding at the end the following: “In the  
 11 case of a plan that holds employer securities (within the  
 12 meaning of section 407(d)(1)), this subsection shall be ap-  
 13 plied by substituting ‘\$1,000,000’ for ‘\$500,000’ each  
 14 place it appears.”

15 (b) EFFECTIVE DATE.—The amendment made by  
 16 this section shall apply to plan years beginning after De-  
 17 cember 31, 2005.

18 **TITLE VIII—INFORMATION TO**  
 19 **ASSIST PENSION PLAN PAR-**  
 20 **TICIPANTS**

21 **SEC. 801. DEFINED CONTRIBUTION PLANS REQUIRED TO**  
 22 **PROVIDE ADEQUATE INVESTMENT EDU-**  
 23 **CATION TO PARTICIPANTS.**

24 (a) ADEQUATE INVESTMENT EDUCATION.—

1           (1) IN GENERAL.—Section 101 of the Employee  
 2       Retirement Income Security Act of 1974 (29 U.S.C.  
 3       1024), as amended by this Act, is amended by redesh-  
 4       ignating subsection (n) as subsection (o) and by in-  
 5       serting after subsection (m) the following:

6       “(n) BASIC INVESTMENT GUIDELINES.—

7           “(1) IN GENERAL.—The administrator of an in-  
 8       dividual account plan (other than a one-participant  
 9       retirement plan described in subsection (i)(8)(B))  
 10      shall furnish at least once each year to each partici-  
 11      pant or beneficiary who has the right to direct the  
 12      investment of assets in his or her account the model  
 13      form relating to basic investment guidelines which is  
 14      described in paragraph (2).

15      “(2) MODEL FORM.—

16           “(A) IN GENERAL.—The Secretary shall,  
 17      in consultation with the Secretary of Treasury,  
 18      develop and make available to individual ac-  
 19      count plans for distribution under paragraph  
 20      (1) a model form containing basic guidelines for  
 21      investing for retirement. Except as otherwise  
 22      provided by the Secretary, such guidelines shall  
 23      include—

24           “(i) information on the benefits of di-  
 25      versification,

1 “(ii) information on the essential dif-  
 2 ferences, in terms of risk and return, of  
 3 pension plan investments, including stocks,  
 4 bonds, mutual funds, and money market  
 5 investments,

6 “(iii) information on how an individ-  
 7 ual’s pension plan investment allocations  
 8 may differ depending on the individual’s  
 9 age and years to retirement and on other  
 10 factors determined by the Secretary,

11 “(iv) sources of information where in-  
 12 dividuals may learn more about pension  
 13 rights, individual investing, and investment  
 14 advice, and

15 “(v) such other information related to  
 16 individual investing as the Secretary deter-  
 17 mines appropriate.

18 “(B) CALCULATION INFORMATION.—The  
 19 model form under subparagraph (A) shall in-  
 20 clude addresses for Internet sites, and a work-  
 21 sheet, which a participant or beneficiary may  
 22 use to calculate—

23 “(i) the retirement age value of the  
 24 participant’s or beneficiary’s nonforfeitable  
 25 pension benefits under the plan (expressed

1 as an annuity amount and determined by  
 2 reference to varied historical annual rates  
 3 of return and annuity interest rates), and  
 4 “(ii) other important amounts relating  
 5 to retirement savings, including the  
 6 amount which a participant or beneficiary  
 7 would be required to save annually to pro-  
 8 vide a retirement income equal to various  
 9 percentages of their current salary (ad-  
 10 justed for expected growth prior to retire-  
 11 ment).

12 The Secretary shall develop an Internet site  
 13 which an individual may use in making such  
 14 calculations and the address for such site shall  
 15 be included with the form.

16 “(C) PUBLIC COMMENT.—The Secretary of  
 17 Labor shall provide at least 90 days for public  
 18 comment before publishing final notice of the  
 19 model form.

20 “(3) RULES RELATING TO FORM AND STATE-  
 21 MENT.—The model form under paragraph (2)—

22 “(A) shall be written in a manner cal-  
 23 culated to be understood by the average plan  
 24 participant, and



1           “(B) may be delivered in written, elec-  
 2           tronic, or other appropriate form to the extent  
 3           such form is reasonably accessible to partici-  
 4           pants and beneficiaries.”

5           (2) ENFORCEMENT.—Section 502(c)(7) of such  
 6           Act (29 U.S.C. 1132(c)(7)), as amended by this Act,  
 7           is amended by striking “or (l)” and inserting “, (l),  
 8           or (n)”.

9           (c) EFFECTIVE DATE.—

10           (1) IN GENERAL.—The amendments made by  
 11           this section shall apply to plan years beginning after  
 12           December 31, 2006.

13           (2) SPECIAL RULE FOR COLLECTIVELY BAR-  
 14           GAINED AGREEMENTS.—In the case of a plan main-  
 15           tained pursuant to 1 or more collective bargaining  
 16           agreements between employee representatives and 1  
 17           or more employers ratified on or before the date of  
 18           the enactment of this Act, paragraph (1) shall be  
 19           applied to benefits pursuant to, and individuals cov-  
 20           ered by, any such agreement by substituting for  
 21           “December 31, 2006” the earlier of—

22                   (A) the later of—

23                           (i) December 31, 2007, or

24                           (ii) the date on which the last of such  
 25                   collective bargaining agreements termi-

1                   nates (determined without regard to any  
2                   extension thereof after such date of enact-  
3                   ment), or

4                   (B) December 31, 2008.

5   **SEC. 802. INDEPENDENT INVESTMENT ADVICE PROVIDED**  
6                   **TO PLAN PARTICIPANTS.**

7           (a) IN GENERAL.—Section 404 of the Employee Re-  
8   tirement Income Security Act of 1974 (29 U.S.C. 1104)  
9   is amended by adding at the end the following new sub-  
10 section:

11           “(e) INDEPENDENT INVESTMENT ADVISER.—

12                   “(1) IN GENERAL.—In the case of an individual  
13   account plan which permits a plan participant or  
14   beneficiary to direct the investment of the assets in  
15   his or her account, if a plan sponsor or other person  
16   who is a fiduciary designates and monitors a quali-  
17   fied investment adviser pursuant to the requirements  
18   of paragraph (3), such fiduciary—

19                   “(A) shall be deemed to have satisfied the  
20   requirements under this section for the prudent  
21   designation and periodic review of an invest-  
22   ment adviser with whom the plan sponsor or  
23   other person who is a fiduciary enters into an  
24   arrangement for the provision of advice referred  
25   to in section 3(21)(A)(ii),

1           “(B) shall not be liable under this section  
 2           for any loss, or by reason of any breach, with  
 3           respect to the provision of investment advice  
 4           given by such adviser to any plan participant or  
 5           beneficiary, and

6           “(C) shall not be liable for any co-fiduciary  
 7           liability under subsections (a)(2) and (b) of sec-  
 8           tion 405 with respect to the provision of invest-  
 9           ment advice given by such adviser to any plan  
 10          participant or beneficiary.

11          “(2) QUALIFIED INVESTMENT ADVISER.—

12           “(A) IN GENERAL.—For purposes of this  
 13           subsection, the term ‘qualified investment ad-  
 14           viser’ means, with respect to a plan, a person—

15                   “(i) who is a fiduciary of the plan by  
 16                   reason of the provision of investment ad-  
 17                   vice by such person to a plan participant  
 18                   or beneficiary;

19                   “(ii) who—

20                           “(I) is registered as an invest-  
 21                           ment adviser under the Investment  
 22                           Advisers Act of 1940 (15 U.S.C. 80b–  
 23                           1 et seq.),

24                           “(II) is registered as an invest-  
 25                           ment adviser under the laws of the

1 State in which such adviser maintains  
2 the principal office and place of busi-  
3 ness of such adviser, but only if such  
4 State laws are consistent with section  
5 203A of the Investment Advisers Act  
6 of 1940 (15 U.S.C. 80b–3a),

7 “(III) is a bank or similar finan-  
8 cial institution referred to in section  
9 408(b)(4),

10 “(IV) is an insurance company  
11 qualified to do business under the  
12 laws of a State, or

13 “(V) is any other comparably  
14 qualified entity which satisfies such  
15 criteria as the Secretary determines  
16 appropriate, consistent with the pur-  
17 poses of this subsection, and

18 “(iii) who meets the requirements of  
19 subparagraph (B).

20 “(B) ADVISER REQUIREMENTS.—The re-  
21 quirements of this subparagraph are met if  
22 every individual employed (or otherwise com-  
23 pensated) by a person described in subpara-  
24 graph (A)(ii) who provides investment advice on

1           behalf of such person to any plan participant or  
2           beneficiary is—

3                   “(i) an individual described in sub-  
4                   clause (I) of subparagraph (A)(ii),

5                   “(ii) an individual described in sub-  
6                   clause (II) of subparagraph (A)(ii), but  
7                   only if such State has an examination re-  
8                   quirement to qualify for registration,

9                   “(iii) registered as a broker or dealer  
10                  under the Securities Exchange Act of 1934  
11                  (15 U.S.C. 78a et seq.),

12                  “(iv) a registered representative as de-  
13                  scribed in section 3(a)(18) of the Securi-  
14                  ties Exchange Act of 1934 (15 U.S.C.  
15                  78c(a)(18)) or section 202(a)(17) of the  
16                  Investment Advisers Act of 1940 (15  
17                  U.S.C. 80b–2(a)(17)), or

18                  “(v) any other comparably qualified  
19                  individual who satisfies such criteria as the  
20                  Secretary determines appropriate, con-  
21                  sistent with the purposes of this sub-  
22                  section.

23                  “(3) VERIFICATION REQUIREMENTS.—The re-  
24                  quirements of this paragraph are met if—

1           “(A) the plan sponsor or other person who  
2           is a fiduciary in designating a qualified invest-  
3           ment adviser receives at the time of the des-  
4           ignation, and annually thereafter, a written  
5           verification from the qualified investment ad-  
6           viser that the investment adviser—

7                   “(i) is and remains a qualified invest-  
8                   ment adviser,

9                   “(ii) acknowledges that the investment  
10                  adviser is a fiduciary with respect to the  
11                  plan and is solely responsible for its invest-  
12                  ment advice,

13                  “(iii) has reviewed the plan documents  
14                  (including investment options) and has de-  
15                  termined that its relationship with the plan  
16                  and the investment advice provided to any  
17                  plan participant or beneficiary, including  
18                  any fees or other compensation it will re-  
19                  ceive, will not constitute a violation of sec-  
20                  tion 406,

21                  “(iv) will, in providing investment ad-  
22                  vice to any participant or beneficiary, con-  
23                  sider any employer securities or employer  
24                  real property allocated to his or her ac-  
25                  count, and

1           “(v) has the necessary insurance cov-  
2           erage (as determined by the Secretary) for  
3           any claim by any plan participant or bene-  
4           ficiary,

5           “(B) the plan sponsor or other person who  
6           is a fiduciary in designating a qualified invest-  
7           ment adviser reviews the documents described  
8           in paragraph (4) provided by such adviser and  
9           determines that there is no material reason not  
10          to enter into an arrangement for the provision  
11          of advice by such qualified investment adviser,  
12          and

13          “(C) the plan sponsor or other person who  
14          is a fiduciary in designating a qualified invest-  
15          ment adviser, within 30 days of having informa-  
16          tion brought to its attention that the invest-  
17          ment adviser is no longer qualified or that a  
18          substantial number of plan participants or  
19          beneficiaries have raised concerns about the  
20          services being provided by the investment  
21          adviser—

22                 “(i) investigates such information and  
23                 concerns, and

24                 “(ii) determines that there is no mate-  
25                 rial reason not to continue the designation

1 of the adviser as a qualified investment ad-  
2 viser.

3 “(4) DOCUMENTATION.—A qualified investment  
4 adviser shall provide the following documents to the  
5 plan sponsor or other person who is a fiduciary in  
6 designating the adviser:

7 “(A) The contract with the plan sponsor or  
8 other person who is a fiduciary for the services  
9 to be provided by the investment adviser to the  
10 plan participants and beneficiaries.

11 “(B) A disclosure as to any fees or other  
12 compensation that will be received by the in-  
13 vestment adviser for the provision of such in-  
14 vestment advice and as to any fees and other  
15 compensation that will be received as a result of  
16 a participant’s investment election.

17 “(C) The Uniform Application for Invest-  
18 ment Adviser Registration as filed with the Se-  
19 curities and Exchange Commission or a sub-  
20 stantially similar disclosure application as de-  
21 termined by and filed with the Secretary.

22 “(5) TREATMENT AS FIDUCIARY.—Any quali-  
23 fied investment adviser that acknowledges it is a fi-  
24 duciary pursuant to paragraph (3)(A)(ii) shall be  
25 deemed a fiduciary under this part with respect to



1 the provision of investment advice to a plan partici-  
 2 pant or beneficiary.”

3 (b) FIDUCIARY LIABILITY.—Section 404(c)(1)(B) of  
 4 such Act is amended by inserting “(other than a qualified  
 5 investment adviser)” after “fiduciary”.

6 (c) EFFECTIVE DATE.—The amendments made by  
 7 this section shall apply with respect to investment advisers  
 8 designated after the date of the enactment of this Act.

9 **SEC. 803. TREATMENT OF QUALIFIED RETIREMENT PLAN-**  
 10 **NING SERVICES.**

11 (a) IN GENERAL.—Subsection (m) of section 132 of  
 12 the Internal Revenue Code of 1986 (defining qualified re-  
 13 tirement services) is amended by adding at the end the  
 14 following new paragraph:

15 “(4) NO CONSTRUCTIVE RECEIPT.—

16 “(A) IN GENERAL.—No amount shall be  
 17 included in the gross income of any employee  
 18 solely because the employee may choose between  
 19 any qualified retirement planning services pro-  
 20 vided by an eligible investment advisor and  
 21 compensation which would otherwise be includ-  
 22 ible in the gross income of such employee. The  
 23 preceding sentence shall apply to highly com-  
 24 pensated employees only if the choice described  
 25 in such sentence is available on substantially

the same terms to each member of the group of employees normally provided education and information regarding the employer’s qualified employer plan.

“(B) LIMITATION.—The maximum amount which may be excluded under subparagraph (A) with respect to any employee for any taxable year shall not exceed \$1,000.

“(C) ELIGIBLE INVESTMENT ADVISER.—For purposes of this paragraph, the term ‘eligible investment adviser’ means, with respect to a plan, a person—

“(i) who—

“(I) is registered as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.),

“(II) is registered as an investment adviser under the laws of the State in which such adviser maintains the principal office and place of business of such adviser, but only if such State laws are consistent with section 203A of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3a),

1                   “(III) is a bank or similar finan-  
 2                   cial institution referred to in section  
 3                   408(b)(4),

4                   “(IV) is an insurance company  
 5                   qualified to do business under the  
 6                   laws of a State, or

7                   “(V) is any other comparably  
 8                   qualified entity which satisfies such  
 9                   criteria as the Secretary determines  
 10                  appropriate, consistent with the pur-  
 11                  poses of this subsection, and

12                  “(ii) who meets the requirements of  
 13                  subparagraph (D).

14                  “(D) ADVISER REQUIREMENTS.—The re-  
 15                  quirements of this subparagraph are met if  
 16                  every individual employed (or otherwise com-  
 17                  pensated) by a person described in subpara-  
 18                  graph (C)(i) who provides investment advice on  
 19                  behalf of such person to any plan participant or  
 20                  beneficiary is—

21                   “(i) an individual described in sub-  
 22                   clause (I) of subparagraph (C)(i),

23                   “(ii) an individual described in sub-  
 24                   clause (II) of subparagraph (C)(i), but

only if such State has an examination requirement to qualify for registration,

“(iii) registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

“(iv) a registered representative as described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) or section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)), or

“(v) any other comparably qualified individual who satisfies such criteria as the Secretary determines appropriate, consistent with the purposes of this paragraph.

“(E) TERMINATION.—This paragraph shall not apply to taxable years beginning after December 31, 2010.”.

(b) CONFORMING AMENDMENTS.—

(1) Section 403(b)(3)(B) of such Code is amended by inserting “132(m)(4),” after “132(f)(4),”.

(2) Section 414(s)(2) of such Code is amended by inserting “132(m)(4),” after “132(f)(4),”.

1           (3) Section 415(c)(3)(D)(ii) of such Code is  
2       amended by inserting “132(m)(4),” after  
3       “132(f)(4),”.

4       (c) EFFECTIVE DATE.—The amendments made by  
5 this section shall apply to taxable years beginning after  
6 December 31, 2005.

7 **SEC. 804. INCREASE IN PENALTIES FOR COERCIVE INTER-**  
8 **ERENCE WITH EXERCISE OF ERISA RIGHTS.**

9       (a) IN GENERAL.—Section 511 of the Employment  
10 Retirement Income Security Act of 1974 (29 U.S.C. 1141)  
11 is amended—

12           (1) by striking “\$10,000” and inserting  
13       “\$100,000”, and

14           (2) by striking “one year” and inserting “10  
15       years”.

16       (b) EFFECTIVE DATE.—The amendments made by  
17 this section shall apply to violations occurring on and after  
18 the date of the enactment of this Act.

19 **SEC. 805. ADMINISTRATIVE PROVISION.**

20       The Secretary of the Treasury shall have the author-  
21 ity to prescribe rules applicable to the statements required  
22 under sections 101(j) and 101(m) of the Employee Retirement  
23 Income Security Act of 1974 (as added by this Act).

1 **TITLE IX—PROVISIONS RELAT-**  
 2 **ING TO SPOUSAL PENSION**  
 3 **PROTECTION**

4 **SEC. 901. REGULATIONS ON TIME AND ORDER OF**  
 5 **ISSUANCE OF DOMESTIC RELATIONS OR-**  
 6 **DERS.**

7 Not later than 1 year after the date of the enactment  
 8 of this Act, the Secretary of Labor shall issue regulations  
 9 under section 206(d)(3) of the Employee Retirement Secu-  
 10 rity Act of 1974 and section 414(p) of the Internal Rev-  
 11 enue Code of 1986 which clarify that—

12 (1) a domestic relations order otherwise meet-  
 13 ing the requirements to be a qualified domestic rela-  
 14 tions order, including the requirements of section  
 15 206(d)(3)(D) of such Act and section 414(p)(3) of  
 16 such Code, shall not fail to be treated as a qualified  
 17 domestic relations order solely because—

18 (A) the order is issued after, or revises, an-  
 19 other domestic relations order or qualified do-  
 20 mestic relations order; or

21 (B) of the time at which it is issued; and

22 (2) any order described in paragraph (1) shall  
 23 be subject to the same requirements and protections  
 24 which apply to qualified domestic relations orders,

1 including the provisions of section 206(d)(3)(H) of  
 2 such Act and section 414(p)(7) of such Code.

3 **SEC. 902. ENTITLEMENT OF DIVORCED SPOUSES TO RAIL-**  
 4 **ROAD RETIREMENT ANNUITIES INDE-**  
 5 **PENDENT OF ACTUAL ENTITLEMENT OF EM-**  
 6 **PLOYEE.**

7 (a) IN GENERAL.—Section 2 of the Railroad Retire-  
 8 ment Act of 1974 (45 U.S.C. 231a) is amended—

9 (1) in subsection (c)(4)(i), by striking “(A) is  
 10 entitled to an annuity under subsection (a)(1) and  
 11 (B)”;

12 (2) in subsection (e)(5), by striking “or di-  
 13 vorced wife” the second place it appears.

14 (b) EFFECTIVE DATE.—The amendments made by  
 15 this section shall take effect 1 year after the date of the  
 16 enactment of this Act.

17 **SEC. 903. EXTENSION OF TIER II RAILROAD RETIREMENT**  
 18 **BENEFITS TO SURVIVING FORMER SPOUSES**  
 19 **PURSUANT TO DIVORCE AGREEMENTS.**

20 (a) IN GENERAL.—Section 5 of the Railroad Retire-  
 21 ment Act of 1974 (45 U.S.C. 231d) is amended by adding  
 22 at the end the following:

23 “(d) Notwithstanding any other provision of law, the  
 24 payment of any portion of an annuity computed under sec-  
 25 tion 3(b) to a surviving former spouse in accordance with

1 a court decree of divorce, annulment, or legal separation  
 2 or the terms of any court-approved property settlement  
 3 incident to any such court decree shall not be terminated  
 4 upon the death of the individual who performed the service  
 5 with respect to which such annuity is so computed unless  
 6 such termination is otherwise required by the terms of  
 7 such court decree.”

8 (b) EFFECTIVE DATE.—The amendment made by  
 9 this section shall take effect 1 year after the date of the  
 10 enactment of this Act.

11 **SEC. 904. REQUIREMENT FOR ADDITIONAL SURVIVOR AN-**  
 12 **NUITY OPTION.**

13 (a) AMENDMENTS TO INTERNAL REVENUE CODE.—

14 (1) ELECTION OF SURVIVOR ANNUITY.—Section  
 15 417(a)(1)(A) of the Internal Revenue Code of 1986  
 16 is amended—

17 (A) in clause (i), by striking “, and” and  
 18 inserting a comma;

19 (B) by redesignating clause (ii) as clause  
 20 (iii); and

21 (C) by inserting after clause (i) the fol-  
 22 lowing:

23 “(ii) if the participant elects a waiver  
 24 under clause (i), may elect the qualified op-



1           tional survivor annuity at any time during the  
2           applicable election period, and”.

3           (2) DEFINITION.—Section 417 of such Code is  
4           amended by adding at the end the following:

5           “(g) DEFINITION OF QUALIFIED OPTIONAL SUR-  
6           VIVOR ANNUITY.—

7           “(1) IN GENERAL.—For purposes of this sec-  
8           tion, the term ‘qualified optional survivor annuity’  
9           means an annuity—

10           “(A) for the life of the participant with a  
11           survivor annuity for the life of the spouse which  
12           is equal to the applicable percentage of the  
13           amount of the annuity which is payable during  
14           the joint lives of the participant and the spouse,  
15           and

16           “(B) which is the actuarial equivalent of a  
17           single annuity for the life of the participant.

18           Such term also includes any annuity in a form hav-  
19           ing the effect of an annuity described in the pre-  
20           ceding sentence.

21           “(2) APPLICABLE PERCENTAGE.—

22           “(A) IN GENERAL.—For purposes of para-  
23           graph (1), if the survivor annuity percentage—

24           “(i) is less than 75 percent, the appli-  
25           cable percentage is 75 percent, and

1 “(ii) is greater than or equal to 75  
 2 percent, the applicable percentage is 50  
 3 percent.

4 “(B) SURVIVOR ANNUITY PERCENTAGE.—  
 5 For purposes of subparagraph (A), the term  
 6 ‘survivor annuity percentage’ means the per-  
 7 centage which the survivor annuity under the  
 8 plan’s qualified joint and survivor annuity bears  
 9 to the annuity payable during the joint lives of  
 10 the participant and the spouse.”.

11 (3) NOTICE.—Section 417(a)(3)(A)(i) of such  
 12 Code is amended by inserting “and of the qualified  
 13 optional survivor annuity” after “annuity”.

14 (b) AMENDMENTS TO ERISA.—

15 (1) ELECTION OF SURVIVOR ANNUITY.—Section  
 16 205(c)(1)(A) of the Employee Retirement Income  
 17 Security Act of 1974 (29 U.S.C. 1055(c)(1)(A)) is  
 18 amended—

19 (A) in clause (i), by striking “, and” and  
 20 inserting a comma;

21 (B) by redesignating clause (ii) as clause  
 22 (iii); and

23 (C) by inserting after clause (i) the fol-  
 24 lowing:

1           “(ii) if the participant elects a waiver  
 2           under clause (i), may elect the qualified op-  
 3           tional survivor annuity at any time during the  
 4           applicable election period, and”.

5           (2) DEFINITION.—Section 205(d) of such Act  
 6           (29 U.S.C. 1055(d)) is amended—

7                   (A) by inserting “(1)” after “(d)”;

8                   (B) by redesignating paragraphs (1) and  
 9                   (2) as subparagraphs (A) and (B), respectively;  
 10                  and

11                  (C) by adding at the end the following:

12           “(2)(A) For purposes of this section, the term ‘quali-  
 13           fied optional survivor annuity’ means an annuity—

14                   “(i) for the life of the participant with a sur-  
 15                   vivor annuity for the life of the spouse which is  
 16                   equal to the applicable percentage of the amount of  
 17                   the annuity which is payable during the joint lives  
 18                   of the participant and the spouse, and

19                   “(ii) which is the actuarial equivalent of a sin-  
 20                   gle annuity for the life of the participant.

21           Such term also includes any annuity in a form having the  
 22           effect of an annuity described in the preceding sentence.

23           “(B)(i) For purposes of subparagraph (A), if the sur-  
 24           vivor annuity percentage—

1           “(I) is less than 75 percent, the applicable per-  
2           centage is 75 percent, and

3           “(II) is greater than or equal to 75 percent, the  
4           applicable percentage is 50 percent.

5           “(ii) For purposes of clause (i), the term ‘survivor  
6 annuity percentage’ means the percentage which the sur-  
7 vivor annuity under the plan’s qualified joint and survivor  
8 annuity bears to the annuity payable during the joint lives  
9 of the participant and the spouse.”.

10           (3) NOTICE.—Section 205(c)(3)(A)(i) of such  
11 Act (29 U.S.C. 1055(c)(3)(A)(i)) is amended by in-  
12 serting “and of the qualified optional survivor annu-  
13 ity” after “annuity”.

14           (c) EFFECTIVE DATES.—

15           (1) IN GENERAL.—The amendments made by  
16 this section shall apply to plan years beginning after  
17 December 31, 2005.

18           (2) SPECIAL RULE FOR COLLECTIVELY BAR-  
19 GAINED PLANS.—In the case of a plan maintained  
20 pursuant to 1 or more collective bargaining agree-  
21 ments between employee representatives and 1 or  
22 more employers ratified on or before the date of the  
23 enactment of this Act, the amendments made by this  
24 section shall apply to the first plan year beginning  
25 on or after the earlier of—

1 (A) the later of—

2 (i) January 1, 2006, or

3 (ii) the date on which the last of such  
4 collective bargaining agreements termi-  
5 nates (determined without regard to any  
6 extension thereof after the date of enact-  
7 ment of this Act), or

8 (B) January 1, 2007.

9 **TITLE X—IMPROVEMENTS IN**  
10 **PORTABILITY AND DISTRIBUTION RULES**  
11

12 **SEC. 1001. CLARIFICATIONS REGARDING PURCHASE OF**  
13 **PERMISSIVE SERVICE CREDIT.**

14 (a) IN GENERAL.—Section 415(n) of the Internal  
15 Revenue Code of 1986 (relating to special rules for the  
16 purchase of permissive service credit) is amended—

17 (1) by striking “an employee” in paragraph (1)  
18 and inserting “a participant”, and

19 (2) by adding at the end of paragraph (3)(A)  
20 the following new flush sentence:

21 “Such term may include service credit for peri-  
22 ods for which there is no performance of serv-  
23 ice, and notwithstanding clause (ii), may in-  
24 clude service credited in order to provide an in-

1           creased benefit for service credit which a partic-  
 2           ipant is receiving under the plan.”

3           (b) SPECIAL RULES FOR TRUSTEE-TO-TRUSTEE  
 4 TRANSFERS.—Section 415(n)(3) of such Code is amended  
 5 by adding at the end the following new subparagraph:

6                   “(D) SPECIAL RULES FOR TRUSTEE-TO-  
 7 TRUSTEE TRANSFERS.—In the case of a trust-  
 8 ee-to-trustee transfer to which section  
 9 403(b)(13)(A) or 457(e)(17)(A) applies (with-  
 10 out regard to whether the transfer is made be-  
 11 tween plans maintained by the same em-  
 12 ployer)—

13                   “(i) the limitations of subparagraph  
 14 (B) shall not apply in determining whether  
 15 the transfer is for the purchase of permis-  
 16 sive service credit, and

17                   “(ii) the distribution rules applicable  
 18 under this title to the defined benefit gov-  
 19 ernmental plan to which any amounts are  
 20 so transferred shall apply to such amounts  
 21 and any benefits attributable to such  
 22 amounts.”.

23           (c) NONQUALIFIED SERVICE.—Section 415(n)(3) of  
 24 such Code is amended—

1           (1) by striking “permissive service credit attrib-  
 2           utable to nonqualified service” each place it appears  
 3           in subparagraph (B) and inserting “nonqualified  
 4           service credit”,

5           (2) by striking so much of subparagraph (C) as  
 6           precedes clause (i) and inserting:

7                   “(C) NONQUALIFIED SERVICE CREDIT.—  
 8           For purposes of subparagraph (B), the term  
 9           ‘nonqualified service credit’ means permissive  
 10          service credit other than that allowed with re-  
 11          spect to—”, and

12          (3) by striking “elementary or secondary edu-  
 13          cation (through grade 12), as determined under  
 14          State law” and inserting “elementary or secondary  
 15          education (through grade 12), or a comparable level  
 16          of education, as determined under the applicable law  
 17          of the jurisdiction in which the service was per-  
 18          formed”.

19          (d) EFFECTIVE DATES.—

20               (1) IN GENERAL.—The amendments made by  
 21          subsections (a) and (c) shall take effect as if in-  
 22          cluded in the amendments made by section 1526 of  
 23          the Taxpayer Relief Act of 1997.

24               (2) SUBSECTION (b).—The amendments made  
 25          by subsection (b) shall take effect as if included in

1 the amendments made by section 647 of the Eco-  
 2 nomic Growth and Tax Relief Reconciliation Act of  
 3 2001.

4 **SEC. 1002. ALLOW ROLLOVER OF AFTER-TAX AMOUNTS IN**  
 5 **ANNUITY CONTRACTS.**

6 (a) IN GENERAL.—Subparagraph (A) of section  
 7 402(c)(2) (relating to the maximum amount which may  
 8 be rolled over) is amended—

9 (1) by striking “which is part of a plan which  
 10 is a defined contribution plan and which agrees to  
 11 separately account” and inserting “or to an annuity  
 12 contract described in section 403(b) and such trust  
 13 or contract provides for separate accounting”; and

14 (2) by inserting “(and earnings thereon)” after  
 15 “so transferred”.

16 (b) EFFECTIVE DATE.—The amendment made by  
 17 subsection (a) shall apply to taxable years beginning after  
 18 December 31, 2005.

19 **SEC. 1003. CLARIFICATION OF MINIMUM DISTRIBUTION**  
 20 **RULES FOR GOVERNMENTAL PLANS.**

21 The Secretary of the Treasury shall issue regulations  
 22 under which a governmental plan (as defined in section  
 23 414(d) of the Internal Revenue Code of 1986) shall, for  
 24 all years to which section 401(a)(9) of such Code applies  
 25 to such plan, be treated as having complied with such sec-



tion 401(a)(9) if such plan complies with a reasonable  
good faith interpretation of such section 401(a)(9).

**SEC. 1004. WAIVER OF 10 PERCENT EARLY WITHDRAWAL  
PENALTY TAX ON CERTAIN DISTRIBUTIONS  
OF PENSION PLANS FOR PUBLIC SAFETY EM-  
PLOYEES.**

(a) IN GENERAL.—Section 72(t) of the Internal Rev-  
enue Code of 1986 (relating to subsection not to apply  
to certain distributions) is amended by adding at the end  
the following new paragraph:

“(10) DISTRIBUTIONS TO QUALIFIED PUBLIC  
SAFETY EMPLOYEES IN GOVERNMENTAL PLANS.—

“(A) IN GENERAL.—In the case of a dis-  
tribution to a qualified public safety employee  
from a governmental plan (within the meaning  
of section 414(d)) which is a defined benefit  
plan, paragraph (2)(A)(v) shall be applied by  
substituting ‘age 50’ for ‘age 55’.

“(B) QUALIFIED PUBLIC SAFETY EM-  
PLOYEE.—For purposes of this paragraph, the  
term ‘qualified public safety employee’ means  
any employee of a State or political subdivision  
of a State who provides police protection, fire-  
fighting services, or emergency medical services

1           for any area within the jurisdiction of such  
2           State or political subdivision.”

3           (b) **EFFECTIVE DATE.**—The amendment made by  
4 this section shall apply to distributions after the date of  
5 the enactment of this Act.

6 **SEC. 1005. ALLOW ROLLOVERS BY NONSPOUSE BENE-**  
7 **FICIARIES OF CERTAIN RETIREMENT PLAN**  
8 **DISTRIBUTIONS.**

9           (a) **IN GENERAL.**—

10           (1) **QUALIFIED PLANS.**—Section 402(c) of the  
11 Internal Revenue Code of 1986 (relating to rollovers  
12 from exempt trusts) is amended by adding at the  
13 end the following new paragraph:

14           “(11) **DISTRIBUTIONS TO INHERITED INDIV-**  
15 **IDUAL RETIREMENT PLAN OF NONSPOUSE BENE-**  
16 **FICIARY.**—

17           “(A) **IN GENERAL.**—If, with respect to any  
18 portion of a distribution from an eligible retire-  
19 ment plan of a deceased employee, a direct  
20 trustee-to-trustee transfer is made to an indi-  
21 vidual retirement plan described in clause (i) or  
22 (ii) of paragraph (8)(B) established for the pur-  
23 poses of receiving the distribution on behalf of  
24 an individual who is a designated beneficiary  
25 (as defined by section 401(a)(9)(E)) of the em-

1            ployee and who is not the surviving spouse of  
2            the employee—

3                    “(i) the transfer shall be treated as an  
4                    eligible rollover distribution for purposes of  
5                    this subsection,

6                    “(ii) the individual retirement plan  
7                    shall be treated as an inherited individual  
8                    retirement account or individual retirement  
9                    annuity (within the meaning of section  
10                   408(d)(3)(C)) for purposes of this title,  
11                   and

12                   “(iii) section 401(a)(9)(B) (other than  
13                   clause (iv) thereof) shall apply to such  
14                   plan.

15                   “(B) CERTAIN TRUSTS TREATED AS BENE-  
16                   FICIARIES.—For purposes of this paragraph, to  
17                   the extent provided in rules prescribed by the  
18                   Secretary, a trust maintained for the benefit of  
19                   one or more designated beneficiaries shall be  
20                   treated in the same manner as a designated  
21                   beneficiary.”.

22                   (2) SECTION 403(a) PLANS.—Subparagraph  
23                   (B) of section 403(a)(4) of such Code (relating to  
24                   rollover amounts) is amended by striking “and (9)”  
25                   and inserting “, (9), and (11)”.

1           (3) SECTION 403(b) PLANS.—Subparagraph  
 2           (B) of section 403(b)(8) of such Code (relating to  
 3           rollover amounts) is amended by striking “and (9)”  
 4           and inserting “, (9), and (11)”.

5           (4) SECTION 457 PLANS.—Subparagraph (B) of  
 6           section 457(e)(16) of such Code (relating to rollover  
 7           amounts) is amended by striking “and (9)” and in-  
 8           serting “, (9), and (11)”.

9           (b) EFFECTIVE DATE.—The amendments made by  
 10          this section shall apply to distributions after December 31,  
 11          2005.

12   **SEC. 1006. FASTER VESTING OF EMPLOYER NONELECTIVE**  
 13                           **CONTRIBUTIONS.**

14          (a) AMENDMENTS TO THE INTERNAL REVENUE  
 15          CODE OF 1986.—

16               (1) IN GENERAL.—Paragraph (2) of section  
 17               411(a) of the Internal Revenue Code of 1986 (relat-  
 18               ing to employer contributions) is amended to read as  
 19               follows:

20                       “(2) EMPLOYER CONTRIBUTIONS.—

21                               “(A) DEFINED BENEFIT PLANS.—

22                                       “(i) IN GENERAL.—In the case of a  
 23                                       defined benefit plan, a plan satisfies the  
 24                                       requirements of this paragraph if it satis-  
 25                                       fies the requirements of clause (ii) or (iii).

“(ii) 5-YEAR VESTING.—A plan satisfies the requirements of this clause if an employee who has completed at least 5 years of service has a nonforfeitable right to 100 percent of the employee’s accrued benefit derived from employer contributions.

“(iii) 3 TO 7 YEAR VESTING.—A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee’s accrued benefit derived from employer contributions determined under the following table:

<b>“Years of service:</b>	<b>The nonforfeitable percentage is:</b>
3 .....	20
4 .....	40
5 .....	60
6 .....	80
7 or more .....	100.

“(B) DEFINED CONTRIBUTION PLANS.—

“(i) IN GENERAL.—In the case of a defined contribution plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).

“(ii) 3-YEAR VESTING.—A plan satisfies the requirements of this clause if an employee who has completed at least 3

years of service has a nonforfeitable right to 100 percent of the employee's accrued benefit derived from employer contributions.

“(iii) 2 TO 6 YEAR VESTING.—A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee's accrued benefit derived from employer contributions determined under the following table:

<b>“Years of service:</b>	<b>The nonforfeitable percentage is:</b>
2 .....	20
3 .....	40
4 .....	60
5 .....	80
6 or more .....	100.”.

(2) CONFORMING AMENDMENT.—Section 411(a) of such Code (relating to general rule for minimum vesting standards) is amended by striking paragraph (12).

(b) AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) IN GENERAL.—Paragraph (2) of section 203(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1053(a)(2)) is amended to read as follows:

1           “(2)(A)(i) In the case of a defined benefit plan,  
2           a plan satisfies the requirements of this paragraph  
3           if it satisfies the requirements of clause (ii) or (iii).

4           “(ii) A plan satisfies the requirements of this  
5           clause if an employee who has completed at least 5  
6           years of service has a nonforfeitable right to 100  
7           percent of the employee’s accrued benefit derived  
8           from employer contributions.

9           “(iii) A plan satisfies the requirements of this  
10          clause if an employee has a nonforfeitable right to  
11          a percentage of the employee’s accrued benefit de-  
12          rived from employer contributions determined under  
13          the following table:

<b>“Years of service:</b>	<b>The nonforfeitable percentage is:</b>
3 .....	20
4 .....	40
5 .....	60
6 .....	80
7 or more .....	100.

14          “(B)(i) In the case of an individual account  
15          plan, a plan satisfies the requirements of this para-  
16          graph if it satisfies the requirements of clause (ii) or  
17          (iii).

18          “(ii) A plan satisfies the requirements of this  
19          clause if an employee who has completed at least 3  
20          years of service has a nonforfeitable right to 100  
21          percent of the employee’s accrued benefit derived  
22          from employer contributions.

“(iii) A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee’s accrued benefit derived from employer contributions determined under the following table:

<b>“Years of service:</b>	<b>The nonforfeitable percentage is:</b>
2 .....	20
3 .....	40
4 .....	60
5 .....	80
6 or more .....	100.”.

(2) CONFORMING AMENDMENT.—Section 203(a) of such Act is amended by striking paragraph (4).

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (4), the amendments made by this section shall apply to contributions for plan years beginning after December 31, 2005.

(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act, the amendments made by this section shall not apply to contributions on behalf of employees covered by any such agreement for plan years beginning before the earlier of—



1 (A) the later of—

2 (i) the date on which the last of such  
3 collective bargaining agreements termi-  
4 nates (determined without regard to any  
5 extension thereof on or after such date of  
6 the enactment); or

7 (ii) January 1, 2006; or

8 (B) January 1, 2008.

9 (3) SERVICE REQUIRED.—With respect to any  
10 plan, the amendments made by this section shall not  
11 apply to any employee before the date that such em-  
12 ployee has 1 hour of service under such plan in any  
13 plan year to which the amendments made by this  
14 section apply.

15 (4) SPECIAL RULE FOR STOCK OWNERSHIP  
16 PLANS.—Notwithstanding paragraph (1) or (2), in  
17 the case of an employee stock ownership plan (as de-  
18 fined in section 4975(e)(7) of the Internal Revenue  
19 Code of 1986) which had outstanding on September  
20 26, 2005, a loan incurred for the purpose of acquir-  
21 ing qualifying employer securities (as defined in sec-  
22 tion 4975(e)(8) of such Code), the amendments  
23 made by this section shall not apply to any plan year  
24 beginning before the earlier of—

1 (A) the date on which the loan is fully re-  
 2 paid, or

3 (B) the date on which the loan was, as of  
 4 September 26, 2005, scheduled to be fully re-  
 5 paid.

6 **SEC. 1007. ALLOW DIRECT ROLLOVERS FROM RETIREMENT**  
 7 **PLANS TO ROTH IRAS.**

8 (a) IN GENERAL.—Subsection (e) of section 408A of  
 9 the Internal Revenue Code of 1986 (defining qualified roll-  
 10 over contribution) is amended to read as follows:

11 “(e) QUALIFIED ROLLOVER CONTRIBUTION.—For  
 12 purposes of this section, the term ‘qualified rollover con-  
 13 tribution’ means a rollover contribution—

14 “(1) to a Roth IRA from another such account,

15 “(2) from an eligible retirement plan, but only  
 16 if—

17 “(A) in the case of an individual retire-  
 18 ment plan, such rollover contribution meets the  
 19 requirements of section 408(d)(3), and

20 “(B) in the case of any eligible retirement  
 21 plan (as defined in section 402(c)(8)(B) other  
 22 than clauses (i) and (ii) thereof), such rollover  
 23 contribution meets the requirements of section  
 24 402(c), 403(b)(8), or 457(e)(16), as applicable.

1 For purposes of section 408(d)(3)(B), there shall be dis-  
 2 regarded any qualified rollover contribution from an indi-  
 3 vidual retirement plan (other than a Roth IRA) to a Roth  
 4 IRA.”

5 (b) CONFORMING AMENDMENTS.—

6 (1) Section 408A(c)(3)(B) of such Code is  
 7 amended—

8 (A) in the text by striking “individual re-  
 9 tirement plan” and inserting “an eligible retire-  
 10 ment plan (as defined by section  
 11 402(c)(8)(B))”, and

12 (B) in the heading by striking “IRA” and  
 13 inserting “ELIGIBLE RETIREMENT PLAN”.

14 (2) Section 408A(d)(3) of such Code is  
 15 amended—

16 (A) in subparagraph (A), by striking “sec-  
 17 tion 408(d)(3)” inserting “sections 402(c),  
 18 403(b)(8), 408(d)(3), and 457(e)(16)”,

19 (B) in subparagraph (B), by striking “in-  
 20 dividual retirement plan” and inserting “eligible  
 21 retirement plan (as defined by section  
 22 402(c)(8)(B))”,

23 (C) in subparagraph (D), by inserting “or  
 24 6047” after “408(i)”,

1 (D) in subparagraph (D), by striking “or  
 2 both” and inserting “persons subject to section  
 3 6047(d)(1), or all of the foregoing persons”,  
 4 and

5 (E) in the heading, by striking “IRA” and  
 6 inserting “ELIGIBLE RETIREMENT PLAN”.

7 (c) EFFECTIVE DATE.—The amendments made by  
 8 this section shall apply to distributions after December 31,  
 9 2005.

10 **SEC. 1008. ELIMINATION OF HIGHER PENALTY ON CERTAIN**  
 11 **SIMPLE PLAN DISTRIBUTIONS.**

12 (a) IN GENERAL.—Subsection (t) of section 72 of the  
 13 Internal Revenue Code of 1986 (relating to 10-percent ad-  
 14 ditional tax on early distributions from qualified retire-  
 15 ment plans), as amended by section 1004, is amended by  
 16 striking paragraph (6) and redesignating paragraphs (7),  
 17 (8), (9), and (10) as paragraphs (6), (7), (8), and (9),  
 18 respectively.

19 (b) CONFORMING AMENDMENTS.—

20 (1) Section 72(t)(2)(E) of such Code is amend-  
 21 ed by striking “paragraph (7)” and inserting “para-  
 22 graph (6)”.

23 (2) Section 72(t)(2)(F) of such Code is amend-  
 24 ed by striking “paragraph (8)” and inserting “para-  
 25 graph (7)”.

1           (3) Section 408(d)(3)(G) of such Code is  
 2           amended by striking “applies” and inserting “ap-  
 3           plied on the day before the date of the enactment of  
 4           the Pension Security and Transparency Act of  
 5           2005)”.

6           (4) Section 457(a)(2) of such Code is amended  
 7           by striking “section 72(t)(9)” and inserting “section  
 8           72(t)(8)”.

9           (c) EFFECTIVE DATE.—The amendments made by  
 10          this section shall apply to years beginning after December  
 11          31, 2005.

12       **SEC. 1009. SIMPLE PLAN PORTABILITY.**

13          (a) REPEAL OF LIMITATION.—Paragraph (3) of sec-  
 14          tion 408(d) of the Internal Revenue Code of 1986 (relat-  
 15          ing to rollover contributions), as amended by this Act, is  
 16          amended by striking subparagraph (G) and redesignating  
 17          subparagraphs (H) and (I) as subparagraphs (G) and (H),  
 18          respectively.

19          (b) EFFECTIVE DATE.—The amendment made by  
 20          this section shall apply to years beginning after December  
 21          31, 2005.

22       **SEC. 1010. ELIGIBILITY FOR PARTICIPATION IN RETIRE-**  
 23       **MENT PLANS.**

24          An individual shall not be precluded from partici-  
 25          pating in an eligible deferred compensation plan by reason

1 of having received a distribution under section 457(e)(9)  
 2 of the Internal Revenue Code of 1986, as in effect prior  
 3 to the enactment of the Small Business Job Protection  
 4 Act of 1996.

5 **SEC. 1011. TRANSFERS TO THE PBGC.**

6 (a) MANDATORY DISTRIBUTIONS TO PBGC.—Clause  
 7 (i) of section 401(a)(31)(B) of the Internal Revenue Code  
 8 of 1986 (relating to general rule for certain mandatory  
 9 distributions) is amended by inserting “to the Pension  
 10 Benefit Guaranty Corporation in accordance with section  
 11 4050(e) of the Employee Retirement Income Security Act  
 12 of 1974 or” after “such transfer”.

13 (b) TAX TREATMENT OF DISTRIBUTIONS.—Subpara-  
 14 graph (B) of section 401(a)(31) of such Code is amended  
 15 by adding at the end the following new clause:

16 “(iii) INCOME TAX TREATMENT OF  
 17 TRANSFERS TO PBGC.—For purposes of  
 18 determining the income tax treatment re-  
 19 lating to transfers to the Pension Benefit  
 20 Guaranty Corporation under clause (i)—

21 “(I) the transfer of amounts to  
 22 the Pension Benefit Guaranty Cor-  
 23 poration pursuant to clause (i) shall  
 24 be treated as a transfer to an indi-

1                   vidual retirement plan under such  
2                   clause, and

3                   “(II) the distribution of such  
4                   amounts from the Pension Benefit  
5                   Guaranty Corporation shall be treated  
6                   as a distribution from an individual  
7                   retirement plan.”.

8           (c) MISSING PARTICIPANTS AND BENEFICIARIES.—  
9   Section 4050 of the Employee Retirement Income Security  
10 Act of 1974 (29 U.S.C. 1350), as amended by section  
11 1012, is amended by redesignating subsection (e) as sub-  
12 section (g) and by inserting after subsection (d) the fol-  
13 lowing new subsections:

14           “(e) INVOLUNTARY CASHOUTS.—

15                   “(1) PAYMENT BY THE CORPORATION.—If ben-  
16                   efits under a plan described in paragraph (3) were  
17                   transferred to the corporation under section  
18                   401(a)(31)(B) of the Internal Revenue Code of  
19                   1986, the corporation shall, upon application filed by  
20                   the participant or beneficiary with the corporation in  
21                   such form and manner as may be prescribed in regu-  
22                   lations of the corporation, pay to the participant or  
23                   beneficiary the amount transferred (or the appro-  
24                   priate survivor benefit) either—

25                   “(A) in a single sum (plus interest), or

1           “(B) in such other form as is specified in  
2           regulations of the corporation.

3           “(2) INFORMATION TO THE CORPORATION.—To  
4           the extent provided in regulations, the plan adminis-  
5           trator of a plan described in paragraph (3) shall,  
6           upon a transfer of benefits to the corporation under  
7           section 401(a)(31)(B) of such Code, provide the cor-  
8           poration information with respect to benefits of the  
9           participant or beneficiary so transferred.

10          “(3) PLANS DESCRIBED.—A plan is described  
11          in this paragraph if the plan is a pension plan (with-  
12          in the meaning of section 3(2))—

13               “(A) which provides for mandatory dis-  
14               tributions under section 401(a)(31)(B) of the  
15               Internal Revenue Code of 1986, and

16               “(B) which is not a plan described in para-  
17               graphs (2) through (11) of section 4021(b).

18          “(4) CERTAIN PROVISIONS NOT TO APPLY.—  
19          Subsections (a)(1) and (a)(3) shall not apply to a  
20          plan described in paragraph (3).

21          “(f) AUTHORITY TO CHARGE FEE.—The corporation  
22          may charge a reasonable fee for costs incurred in connec-  
23          tion with the transfer and management of amounts trans-  
24          ferred to the corporation under this section. Such fee may



1 be imposed on the transferor and may be deducted from  
 2 amounts so transferred.”.

3 (d) EFFECTIVE DATES.—

4 (1) INTERNAL REVENUE CODE PROVISIONS.—

5 The amendments made by subsections (a) and (b)  
 6 shall take effect as if included in the amendments  
 7 made by section 657 of the Economic Growth and  
 8 Tax Relief Reconciliation Act of 2001.

9 (2) EMPLOYEE RETIREMENT INCOME SECURITY

10 ACT OF 1974 PROVISIONS.—The amendments made  
 11 by subsection (c) shall apply to distributions made  
 12 after final regulations implementing subsections (e)  
 13 and (f) of section 4050 of the Employee Retirement  
 14 Income Security Act of 1974 (as added by sub-  
 15 section (c)) are prescribed.

16 (3) REGULATIONS.—The Pension Benefit Guar-  
 17 anty Corporation shall issue regulations necessary to  
 18 carry out the amendments made by subsection (c)  
 19 not later than December 31, 2006.

20 **SEC. 1012. MISSING PARTICIPANTS.**

21 (a) IN GENERAL.—Section 4050 of the Employee Re-  
 22 tirement Income Security Act of 1974 (29 U.S.C. 1350)  
 23 is amended by redesignating subsection (c) as subsection  
 24 (e) and by inserting after subsection (b) the following new  
 25 subsections:

1       “(c) MULTIEMPLOYER PLANS.—The corporation  
 2 shall prescribe rules similar to the rules in subsection (a)  
 3 for multiemployer plans covered by this title that termi-  
 4 nate under section 4041A.

5       “(d) PLANS NOT OTHERWISE SUBJECT TO TITLE.—

6               “(1) TRANSFER TO CORPORATION.—The plan  
 7 administrator of a plan described in paragraph (4)  
 8 may elect to transfer a missing participant’s benefits  
 9 to the corporation upon termination of the plan.

10              “(2) INFORMATION TO THE CORPORATION.—To  
 11 the extent provided in regulations, the plan adminis-  
 12 trator of a plan described in paragraph (4) shall,  
 13 upon termination of the plan, provide the corpora-  
 14 tion information with respect to benefits of a miss-  
 15 ing participant if the plan transfers such benefits—

16                      “(A) to the corporation, or

17                      “(B) to an entity other than the corpora-  
 18 tion or a plan described in paragraph (4)(B)(ii).

19              “(3) PAYMENT BY THE CORPORATION.—If ben-  
 20 efits of a missing participant were transferred to the  
 21 corporation under paragraph (1), the corporation  
 22 shall, upon location of the participant or beneficiary,  
 23 pay to the participant or beneficiary the amount  
 24 transferred (or the appropriate survivor benefit)  
 25 either—

1 “(A) in a single sum (plus interest), or

2 “(B) in such other form as is specified in  
3 regulations of the corporation.

4 “(4) PLANS DESCRIBED.—A plan is described  
5 in this paragraph if—

6 “(A) the plan is a pension plan (within the  
7 meaning of section 3(2))—

8 “(i) to which the provisions of this  
9 section do not apply (without regard to  
10 this subsection), and

11 “(ii) which is not a plan described in  
12 paragraphs (2) through (11) of section  
13 4021(b), and

14 “(B) at the time the assets are to be dis-  
15 tributed upon termination, the plan—

16 “(i) has missing participants, and

17 “(ii) has not provided for the transfer  
18 of assets to pay the benefits of all missing  
19 participants to another pension plan (with-  
20 in the meaning of section 3(2)).

21 “(5) CERTAIN PROVISIONS NOT TO APPLY.—  
22 Subsections (a)(1) and (a)(3) shall not apply to a  
23 plan described in paragraph (4).”.

24 (b) CONFORMING AMENDMENTS.—Section 206(f) of  
25 such Act (29 U.S.C. 1056(f)) is amended—

1           (1) by striking “title IV” and inserting “section  
2       4050”; and

3           (2) by striking “the plan shall provide that,”.

4       (c) EFFECTIVE DATE.—The amendments made by  
5 this section shall apply to distributions made after final  
6 regulations implementing subsections (c) and (d) of sec-  
7 tion 4050 of the Employee Retirement Income Security  
8 Act of 1974 (as added by subsection (a)), respectively, are  
9 prescribed.

10 **SEC. 1013. MODIFICATIONS OF RULES GOVERNING HARD-**  
11 **SHIPS AND UNFORSEEN FINANCIAL EMER-**  
12 **GENCIES.**

13       Within 180 days after the date of the enactment of  
14 this Act, the Secretary of the Treasury shall modify the  
15 rules for determining whether a participant has had a  
16 hardship for purposes of section 401(k)(2)(B)(i)(IV) of  
17 the Internal Revenue Code of 1986 to provide that if an  
18 event (including the occurrence of a medical expense)  
19 would constitute a hardship under the plan if it occurred  
20 with respect to the participant’s spouse or dependent (as  
21 defined in section 152 of such Code), such event shall, to  
22 the extent permitted under a plan, constitute a hardship  
23 if it occurs with respect to a person who is a beneficiary  
24 under the plan with respect to the participant. The Sec-

1 retary of the Treasury shall issue similar rules for pur-  
 2 poses of determining whether a participant has had—

3 (1) a hardship for purposes of section  
 4 403(b)(11)(B) of such Code; or

5 (2) an unforeseen financial emergency for pur-  
 6 poses of sections 409A(a)(2)(A)(vi),  
 7 409A(a)(2)(B)(ii), and 457(d)(1)(A)(iii) of such  
 8 Code.

## 9 **TITLE XI—ADMINISTRATIVE** 10 **PROVISIONS**

### 11 **SEC. 1101. EMPLOYEE PLANS COMPLIANCE RESOLUTION** 12 **SYSTEM.**

13 (a) IN GENERAL.—The Secretary of the Treasury  
 14 shall have full authority to establish and implement the  
 15 Employee Plans Compliance Resolution System (or any  
 16 successor program) and any other employee plans correc-  
 17 tion policies, including the authority to waive income, ex-  
 18 cise, or other taxes to ensure that any tax, penalty, or  
 19 sanction is not excessive and bears a reasonable relation-  
 20 ship to the nature, extent, and severity of the failure.

21 (b) IMPROVEMENTS.—The Secretary of the Treasury  
 22 shall continue to update and improve the Employee Plans  
 23 Compliance Resolution System (or any successor pro-  
 24 gram), giving special attention to—

1           (1) increasing the awareness and knowledge of  
2           small employers concerning the availability and use  
3           of the program;

4           (2) taking into account special concerns and  
5           circumstances that small employers face with respect  
6           to compliance and correction of compliance failures;

7           (3) extending the duration of the self-correction  
8           period under the Self-Correction Program for signifi-  
9           cant compliance failures;

10          (4) expanding the availability to correct insig-  
11          nificant compliance failures under the Self-Correc-  
12          tion Program during audit; and

13          (5) assuring that any tax, penalty, or sanction  
14          that is imposed by reason of a compliance failure is  
15          not excessive and bears a reasonable relationship to  
16          the nature, extent, and severity of the failure.

17 **SEC. 1102. NOTICE AND CONSENT PERIOD REGARDING DIS-**  
18 **TRIBUTIONS.**

19       (a) EXPANSION OF PERIOD.—

20           (1) AMENDMENT OF INTERNAL REVENUE  
21       CODE.—

22           (A) IN GENERAL.—Section 417(a)(6)(A) of  
23       the Internal Revenue Code of 1986 is amended  
24       by striking “90-day” and inserting “180-day”.

1 (B) MODIFICATION OF REGULATIONS.—

2 The Secretary of the Treasury shall modify the  
 3 regulations under sections 402(f), 411(a)(11),  
 4 and 417 of the Internal Revenue Code of 1986  
 5 by substituting “180 days” for “90 days” each  
 6 place it appears in Treasury Regulations sec-  
 7 tions 1.402(f)–1, 1.411(a)–11(c), and 1.417(e)–  
 8 1(b).

9 (2) AMENDMENT OF ERISA.—

10 (A) IN GENERAL.—Section 205(c)(7)(A) of  
 11 the Employee Retirement Income Security Act  
 12 of 1974 (29 U.S.C. 1055(c)(7)(A)) is amended  
 13 by striking “90-day” and inserting “180-day”.

14 (B) MODIFICATION OF REGULATIONS.—

15 The Secretary of the Treasury shall modify the  
 16 regulations under part 2 of subtitle B of title  
 17 I of the Employee Retirement Income Security  
 18 Act of 1974 relating to sections 203(e) and 205  
 19 of such Act by substituting “180 days” for “90  
 20 days” each place it appears.

21 (3) EFFECTIVE DATE.—The amendments and  
 22 modifications made or required by this subsection  
 23 shall apply to years beginning after December 31,  
 24 2005.

25 (b) NOTIFICATION OF RIGHT TO DEFER.—

1           (1) IN GENERAL.—The Secretary of the Treas-  
 2       ury shall modify the regulations under section  
 3       411(a)(11) of the Internal Revenue Code of 1986  
 4       and under section 205 of the Employee Retirement  
 5       Income Security Act of 1974 to provide that the de-  
 6       scription of a participant’s right, if any, to defer re-  
 7       ceipt of a distribution shall also describe the con-  
 8       sequences of failing to defer such receipt.

9           (2) EFFECTIVE DATE.—

10           (A) IN GENERAL.—The modifications re-  
 11       quired by paragraph (1) shall apply to years be-  
 12       ginning after December 31, 2005.

13           (B) REASONABLE NOTICE.—A plan shall  
 14       not be treated as failing to meet the require-  
 15       ments of section 411(a)(11) of such Code or  
 16       section 205 of such Act with respect to any de-  
 17       scription of consequences described in para-  
 18       graph (1) made within 90 days after the Sec-  
 19       retary of the Treasury issues the modifications  
 20       required by paragraph (1) if the plan adminis-  
 21       trator makes a reasonable attempt to comply  
 22       with such requirements.

23 **SEC. 1103. REPORTING SIMPLIFICATION.**

24           (a) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR  
 25       OWNERS AND THEIR SPOUSES.—



1           (1) IN GENERAL.—The Secretary of the Treas-  
2       ury shall modify the requirements for filing annual  
3       returns with respect to one-participant retirement  
4       plans to ensure that such plans with assets of  
5       \$250,000 or less as of the close of the plan year  
6       need not file a return for that year.

7           (2) ONE-PARTICIPANT RETIREMENT PLAN DE-  
8       FINED.—For purposes of this subsection, the term  
9       “one-participant retirement plan” means a retire-  
10      ment plan with respect to which the following re-  
11      quirements are met:

12           (A) on the first day of the plan year—

13               (i) the plan covered only one indi-  
14              vidual (or the individual and the individ-  
15              ual’s spouse) and the individual owned 100  
16              percent of the plan sponsor (whether or  
17              not incorporated), or

18               (ii) the plan covered only one or more  
19              partners (or partners and their spouses) in  
20              the plan sponsor;

21           (B) the plan meets the minimum coverage  
22      requirements of section 410(b) of the Internal  
23      Revenue Code of 1986 without being combined  
24      with any other plan of the business that covers  
25      the employees of the business;

1 (C) the plan does not provide benefits to  
2 anyone except the individual (and the individ-  
3 ual's spouse) or the partners (and their  
4 spouses);

5 (D) the plan does not cover a business that  
6 is a member of an affiliated service group, a  
7 controlled group of corporations, or a group of  
8 businesses under common control; and

9 (E) the plan does not cover a business that  
10 uses the services of leased employees (within  
11 the meaning of section 414(n) of such Code).

12 For purposes of this paragraph, the term "partner"  
13 includes a 2-percent shareholder (as defined in sec-  
14 tion 1372(b) of such Code) of an S corporation.

15 (3) OTHER DEFINITIONS.—Terms used in para-  
16 graph (2) which are also used in section 414 of the  
17 Internal Revenue Code of 1986 shall have the re-  
18 spective meanings given such terms by such section.

19 (4) EFFECTIVE DATE.—The provisions of this  
20 subsection shall apply to plan years beginning on or  
21 after January 1, 2006.

22 (b) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR  
23 PLANS WITH FEWER THAN 25 PARTICIPANTS.—In the  
24 case of plan years beginning after December 31, 2006, the  
25 Secretary of the Treasury and the Secretary of Labor shall

1 provide for the filing of a simplified annual return for any  
 2 retirement plan which covers less than 25 participants on  
 3 the first day of a plan year and which meets the require-  
 4 ments described in subparagraphs (B), (D), and (E) of  
 5 subsection (a)(2).

6 **SEC. 1104. VOLUNTARY EARLY RETIREMENT INCENTIVE**  
 7 **AND EMPLOYMENT RETENTION PLANS MAIN-**  
 8 **TAINED BY LOCAL EDUCATIONAL AGENCIES**  
 9 **AND OTHER ENTITIES.**

10 (a) VOLUNTARY EARLY RETIREMENT INCENTIVE  
 11 PLANS.—

12 (1) TREATMENT AS PLAN PROVIDING SEVER-  
 13 ANCE PAY.—Section 457(e)(11) of the Internal Rev-  
 14 enue Code of 1986 (relating to certain plans ex-  
 15 cluded) is amended by adding at the end the fol-  
 16 lowing new subparagraph:

17 “(D) CERTAIN VOLUNTARY EARLY RETIRE-  
 18 MENT INCENTIVE PLANS.—

19 “(i) IN GENERAL.—If an applicable  
 20 voluntary early retirement incentive plan—

21 “(I) makes payments or supple-  
 22 ments as an early retirement benefit,  
 23 a retirement-type subsidy, or a benefit  
 24 described in the last sentence of sec-  
 25 tion 411(a)(9), and

1                   “(II) such payments or supple-  
 2                   ments are made in coordination with  
 3                   a defined benefit plan which is de-  
 4                   scribed in section 401(a) and includes  
 5                   a trust exempt from tax under section  
 6                   501(a) and which is maintained by an  
 7                   eligible employer described in para-  
 8                   graph (1)(A) or by an education asso-  
 9                   ciation described in clause (ii)(II),  
 10                  such applicable plan shall be treated for  
 11                  purposes of subparagraph (A)(i) as a bona  
 12                  fide severance pay plan with respect to  
 13                  such payments or supplements to the ex-  
 14                  tent such payments or supplements could  
 15                  otherwise have been provided under such  
 16                  defined benefit plan (determined as if sec-  
 17                  tion 411 applied to such defined benefit  
 18                  plan).

19                   “(ii) APPLICABLE VOLUNTARY EARLY  
 20                   RETIREMENT INCENTIVE PLAN.—For pur-  
 21                   poses of this subparagraph, the term ‘ap-  
 22                   plicable voluntary early retirement incen-  
 23                   tive plan’ means a voluntary early retire-  
 24                   ment incentive plan maintained by—

1 “(I) a local educational agency  
 2 (as defined in section 9101 of the Ele-  
 3 mentary and Secondary Education  
 4 Act of 1965 (20 U.S.C. 7801)), or

5 “(II) an education association  
 6 which principally represents employees  
 7 of 1 or more agencies described in  
 8 subclause (I) and which is described  
 9 in section 501(c) (5) or (6) and ex-  
 10 empt from tax under section 501(a).”

11 (2) AGE DISCRIMINATION IN EMPLOYMENT  
 12 ACT.—Section 4(l)(1) of the Age Discrimination in  
 13 Employment Act of 1967 (29 U.S.C. 623(l)(1)) is  
 14 amended—

15 (A) by inserting “(A)” after “(1)”,

16 (B) by redesignating subparagraphs (A)  
 17 and (B) as clauses (i) and (ii), respectively,

18 (C) by redesignating clauses (i) and (ii) of  
 19 subparagraph (B) (as in effect before the  
 20 amendments made by subparagraph (B)) as  
 21 subclauses (I) and (II), respectively, and

22 (D) by adding at the end the following:

23 “(B) A voluntary early retirement incentive  
 24 plan that—

25 “(i) is maintained by—

1 “(I) a local educational agency (as de-  
 2 fined in section 9101 of the Elementary  
 3 and Secondary Education Act of 1965 (20  
 4 U.S.C. 7801), or

5 “(II) an education association which  
 6 principally represents employees of 1 or  
 7 more agencies described in subclause (I)  
 8 and which is described in section 501(c)  
 9 (5) or (6) of the Internal Revenue Code of  
 10 1986 and exempt from taxation under sec-  
 11 tion 501(a) of such Code, and

12 “(ii) makes payments or supplements de-  
 13 scribed in subclauses (I) and (II) of subpara-  
 14 graph (A)(ii) in coordination with a defined  
 15 benefit plan (as so defined) maintained by an  
 16 eligible employer described in section  
 17 457(e)(1)(A) of such Code or by an education  
 18 association described in clause (i)(II),

19 shall be treated solely for purposes of subparagraph  
 20 (A)(ii) as if it were a part of the defined benefit plan  
 21 with respect to such payments or supplements. Pay-  
 22 ments or supplements under such a voluntary early  
 23 retirement incentive plan shall not constitute sever-  
 24 ance pay for purposes of section 4(l)(2) of the Age

1 Discrimination in Employment Act (29 U.S.C.  
2 623(l)(2)).”.

3 (b) EMPLOYMENT RETENTION PLANS.—

4 (1) IN GENERAL.—Section 457(f)(2) of the In-  
5 ternal Revenue Code of 1986 (relating to exceptions)  
6 is amended by striking “and” at the end of subpara-  
7 graph (D), by striking the period at the end of sub-  
8 paragraph (E) and inserting “, and”, and by adding  
9 at the end the following:

10 “(F) that portion of any applicable employ-  
11 ment retention plan described in paragraph (4)  
12 with respect to any participant.”

13 (2) DEFINITIONS AND RULES RELATING TO EM-  
14 PLOYMENT RETENTION PLANS.—Section 457(f) of  
15 such Code is amended by adding at the end the fol-  
16 lowing new paragraph:

17 “(4) EMPLOYMENT RETENTION PLANS.—For  
18 purposes of paragraph (2)(F)—

19 “(A) IN GENERAL.—The portion of an ap-  
20 plicable employment retention plan described in  
21 this paragraph with respect to any participant  
22 is that portion of the plan which provides bene-  
23 fits payable to the participant not in excess of  
24 twice the applicable dollar limit determined  
25 under subsection (e)(15).

1 “(B) OTHER RULES.—

2 “(i) LIMITATION.—Paragraph (2)(F)  
3 shall only apply to the portion of the plan  
4 described in subparagraph (A) for years  
5 preceding the year in which such portion is  
6 paid or otherwise made available to the  
7 participant.

8 “(ii) TREATMENT.—A plan shall not  
9 be treated for purposes of this title as pro-  
10 viding for the deferral of compensation for  
11 any year with respect to the portion of the  
12 plan described in subparagraph (A).

13 “(C) APPLICABLE EMPLOYMENT RETEN-  
14 TION PLAN.—The term ‘applicable employment  
15 retention plan’ means an employment retention  
16 plan maintained by—

17 “(i) a local educational agency (as de-  
18 fined in section 9101 of the Elementary  
19 and Secondary Education Act of 1965 (20  
20 U.S.C. 7801), or

21 “(ii) an education association which  
22 principally represents employees of 1 or  
23 more agencies described in clause (i) and  
24 which is described in section 501(c) (5) or



1 (6) and exempt from taxation under sec-  
 2 tion 501(a).

3 “(D) EMPLOYMENT RETENTION PLAN.—

4 The term ‘employment retention plan’ means a  
 5 plan to pay, upon termination of employment,  
 6 compensation to an employee of a local edu-  
 7 cational agency or education association de-  
 8 scribed in subparagraph (C) for purposes of—

9 “(i) retaining the services of the em-  
 10 ployee, or

11 “(ii) rewarding such employee for the  
 12 employee’s service with 1 or more such  
 13 agencies or associations.”.

14 (c) COORDINATION WITH ERISA.—Section 3(2)(B)  
 15 of the Employee Retirement Income Security Act of 1974  
 16 (29 U.S.C. 1002(2)(B)) is amended by adding at the end  
 17 the following: “An applicable voluntary early retirement  
 18 incentive plan (as defined in section 457(e)(11)(D)(ii) of  
 19 the Internal Revenue Code of 1986) making payments or  
 20 supplements described in section 457(e)(11)(D)(i) of such  
 21 Code, and an applicable employment retention plan (as de-  
 22 fined in section 457(f)(4)(C) of such Code) making pay-  
 23 ments of benefits described in section 457(f)(4)(A) of such  
 24 Code, shall, for purposes of this title, be treated as a wel-

1 fare plan (and not a pension plan) with respect to such  
 2 payments and supplements.”

3 (d) EFFECTIVE DATES.—

4 (1) IN GENERAL.—The amendments made by  
 5 this Act shall take effect on the date of the enact-  
 6 ment of this Act.

7 (2) TAX AMENDMENTS.—The amendments  
 8 made by subsections (a)(1) and (b) shall apply to  
 9 taxable years ending after the date of the enactment  
 10 of this Act.

11 (3) ERISA AMENDMENTS.—The amendment  
 12 made by subsection (c) shall apply to plan years  
 13 ending after the date of the enactment of this Act.

14 (4) CONSTRUCTION.—Nothing in the amend-  
 15 ments made by this section shall alter or affect the  
 16 construction of the Internal Revenue Code of 1986,  
 17 the Employee Retirement Income Security Act of  
 18 1974, or the Age Discrimination in Employment Act  
 19 of 1967 as applied to any plan, arrangement, or con-  
 20 duct to which such amendments do not apply.

21 **SEC. 1105. NO REDUCTION IN UNEMPLOYMENT COMPENSA-**  
 22 **TION AS A RESULT OF PENSION ROLLOVERS.**

23 (a) IN GENERAL.—Section 3304(a) of the Internal  
 24 Revenue Code of 1986 (relating to requirements for State

1 unemployment laws) is amended by adding at the end the  
 2 following new flush sentence:

3 “Compensation shall not be reduced under paragraph (15)  
 4 for any pension, retirement or retired pay, annuity, or  
 5 similar payment which is not includible in gross income  
 6 of the individual for the taxable year in which paid because  
 7 it was part of a rollover distribution.”.

8 (b) EFFECTIVE DATE.—The amendment made by  
 9 this section shall apply to weeks beginning on or after the  
 10 date of the enactment of this Act.

11 **SEC. 1106. WITHHOLDING ON DISTRIBUTIONS FROM GOV-**  
 12 **ERNMENTAL SECTION 457 PLANS.**

13 (a) IN GENERAL.—Section 641(f) of the Economic  
 14 Growth and Tax Relief Reconciliation Act of 2001 is  
 15 amended by adding at the end the following new para-  
 16 graph:

17 “(4) TRANSITION RULE FOR CERTAIN GOVERN-  
 18 MENTAL PLANS.—In the case of distributions from  
 19 an eligible deferred compensation plan of an em-  
 20 ployer described in section 457(e)(1)(A) of the Inter-  
 21 nal Revenue Code of 1986 which are made after De-  
 22 cember 31, 2001, and which are part of a series of  
 23 distributions which—

24 “(A) began before January 1, 2002, and

1           “(B) are payable for 10 years or less, the  
 2           Internal Revenue Code of 1986 may be applied  
 3           to such distributions without regard to the  
 4           amendments made by subsection (a)(1)(D).”.

5           (b) EFFECTIVE DATE.—The amendment made by  
 6           subsection (a) shall take effect as if included in the provi-  
 7           sions of section 641 of the Economic Growth and Tax Re-  
 8           lief Reconciliation Act of 2001.

9   **SEC. 1107. TREATMENT OF DEFINED BENEFIT PLAN AS**  
 10           **GOVERNMENTAL PLAN.**

11           (a) IN GENERAL.—For purposes of the Internal Rev-  
 12           enue Code of 1986 and the Employee Retirement Income  
 13           Security Act of 1974, an eligible defined benefit plan shall  
 14           be treated as a governmental plan (within the meaning  
 15           of section 414(d) of such Code and section 3(32) of such  
 16           Act).

17           (b) ELIGIBLE DEFINED BENEFIT PLAN.—For pur-  
 18           poses of this section, an eligible defined benefit plan is  
 19           a defined benefit plan maintained by a nonprofit corpora-  
 20           tion which was—

21                   (1) incorporated on September 16, 1998, under  
 22                   a State nonprofit corporation statute; and

23                   (2) organized for the express purpose of sup-  
 24                   porting the missions and goals of a public corpora-  
 25                   tion which—

1 (A) was created by a State statute effective  
 2 on July 1, 1995;

3 (B) is a governmental entity under State  
 4 law; and

5 (C) is a member of the nonprofit corpora-  
 6 tion.

7 (c) EFFECTIVE DATE.—The amendments made by  
 8 this section shall apply to any year beginning before, on,  
 9 or after the date of the enactment of this Act.

10 **SEC. 1108. INCREASING PARTICIPATION IN CASH OR DE-**  
 11 **FERRED PLANS THROUGH AUTOMATIC CON-**  
 12 **TRIBUTION ARRANGEMENTS.**

13 (a) IN GENERAL.—Section 401(k) of the Internal  
 14 Revenue Code of 1986 (relating to cash or deferred ar-  
 15 rangement) is amended by adding at the end the following  
 16 new paragraph:

17 “(13) NONDISCRIMINATION REQUIREMENTS  
 18 FOR AUTOMATIC CONTRIBUTION TRUSTS.—

19 “(A) IN GENERAL.—A cash or deferred ar-  
 20 rangement shall be treated as meeting the re-  
 21 quirements of paragraph (3)(A)(ii) if such ar-  
 22 rangement constitutes an automatic contribu-  
 23 tion trust.

24 “(B) AUTOMATIC CONTRIBUTION TRUST.—

1           “(i) IN GENERAL.—For purposes of  
 2           this paragraph, the term ‘automatic con-  
 3           tribution trust’ means an arrangement—

4                   “(I) except as provided in clauses  
 5                   (ii) and (iii), under which each em-  
 6                   ployee eligible to participate in the ar-  
 7                   rangement is treated as having elected  
 8                   to have the employer make elective  
 9                   contributions in an amount equal to  
 10                  the applicable percentage of the em-  
 11                  ployee’s compensation, and

12                  “(II) which meets the require-  
 13                  ments of subparagraphs (C), (D), (E),  
 14                  and (F).

15           “(ii) EXCEPTION FOR EXISTING EM-  
 16           PLOYEES.—In the case of any employee—

17                   “(I) who was eligible to partici-  
 18                   pate in the arrangement (or a prede-  
 19                   cessor arrangement) immediately be-  
 20                   fore the first date on which the ar-  
 21                   rangement is an automatic contribu-  
 22                   tion trust, and

23                   “(II) whose rate of contribution  
 24                   immediately before such first date was

1           less than the applicable percentage for  
 2           the employee,  
 3           clause (i)(I) shall not apply to such em-  
 4           ployee until the date which is 1 year after  
 5           such first date (or such earlier date as the  
 6           employee may elect).

7           “(iii) ELECTION OUT.—Each em-  
 8           ployee eligible to participate in the ar-  
 9           rangement may specifically elect not to  
 10          have contributions made under clause (i),  
 11          and such clause shall cease to apply to  
 12          compensation paid on or after the effective  
 13          date of the election.

14          “(iv) APPLICABLE PERCENTAGE.—  
 15          For purposes of this subparagraph—

16               “(I) IN GENERAL.—The term  
 17               ‘applicable percentage’ means, with  
 18               respect to any employee, the uniform  
 19               percentage (not less than 3 percent)  
 20               determined under the arrangement. In  
 21               the case of an employee who was eligi-  
 22               ble to participate in the arrangement  
 23               (or a predecessor arrangement) imme-  
 24               diately before the first date on which  
 25               the arrangement is an automatic con-

1           tribution trust, the initial applicable  
 2           percentage shall in no event be less  
 3           than the percentage in effect with re-  
 4           spect to the employee under the ar-  
 5           rangement immediately before the em-  
 6           ployee first begins participation in the  
 7           automatic contribution trust.

8                   “(II) INCREASE IN PERCENT-  
 9           AGE.—In the case of the second plan  
 10          year beginning after the first date on  
 11          which the election under clause (i)(I)  
 12          is in effect with respect to the em-  
 13          ployee and any succeeding plan year,  
 14          the applicable percentage shall be a  
 15          percentage (not greater than 10 per-  
 16          cent or such higher uniform percent-  
 17          age determined under the arrange-  
 18          ment) equal to the sum of the applica-  
 19          ble percentage for the employee as of  
 20          the close of the preceding plan year  
 21          plus 1 percentage point (or such high-  
 22          er percentage specified by the plan). A  
 23          plan may elect to provide that, in lieu  
 24          of any increase under the preceding  
 25          sentence, the increase in the applica-



1           ble percentage required under this  
 2           subclause shall occur after each in-  
 3           crease in compensation an employee  
 4           receives on or after the first day of  
 5           such second plan year and that the  
 6           applicable percentage after each such  
 7           increase in compensation shall be  
 8           equal to the applicable percentage for  
 9           the employee immediately before such  
 10          increase in compensation plus 1 per-  
 11          centage point (or such higher percent-  
 12          age specified by the plan).

13                   “(C) MATCHING OR NONELECTIVE CON-  
 14           TRIBUTIONS.—

15                   “(i) IN GENERAL.—The requirements  
 16           of this subparagraph are met if, under the  
 17           arrangement, the employer—

18                   “(I) makes matching contribu-  
 19           tions on behalf of each employee who  
 20           is not a highly compensated employee  
 21           in an amount equal to 50 percent of  
 22           the elective contributions of the em-  
 23           ployee to the extent such elective con-  
 24           tributions do not exceed 7 percent of  
 25           compensation; or

1 “(II) is required, without regard  
2 to whether the employee makes an  
3 elective contribution or employee con-  
4 tribution, to make a contribution to a  
5 defined contribution plan on behalf of  
6 each employee who is not a highly  
7 compensated employee and who is eli-  
8 gible to participate in the arrange-  
9 ment in an amount equal to at least  
10 3 percent of the employee’s compensa-  
11 tion,

12 The rules of clauses (ii) and (iii) of para-  
13 graph (12)(B) shall apply for purposes of  
14 subclause (I). The rules of paragraph  
15 (12)(E)(ii) shall apply for purposes of sub-  
16 clauses (I) and (II).

17 “(ii) OTHER PLANS.—An arrange-  
18 ment shall be treated as meeting the re-  
19 quirements under clause (i) if any other  
20 plan maintained by the employer meets  
21 such requirements with respect to employ-  
22 ees eligible under the arrangement.

23 “(D) NOTICE REQUIREMENTS.—

1 “(i) IN GENERAL.—The requirements  
 2 of this subparagraph are met if the re-  
 3 quirements of clauses (ii) and (iii) are met.

4 “(ii) REASONABLE PERIOD TO MAKE  
 5 ELECTION.—The requirements of this  
 6 clause are met if each employee to whom  
 7 subparagraph (B)(i) applies—

8 “(I) receives a notice explaining  
 9 the employee’s right under the ar-  
 10 rangement to elect not to have elective  
 11 contributions made on the employee’s  
 12 behalf, and how contributions made  
 13 under the arrangement will be in-  
 14 vested in the absence of any invest-  
 15 ment election by the employee, and

16 “(II) has a reasonable period of  
 17 time after receipt of such notice and  
 18 before the first elective contribution is  
 19 made to make such election.

20 “(iii) ANNUAL NOTICE OF RIGHTS  
 21 AND OBLIGATIONS.—The requirements of  
 22 this clause are met if each employee eligi-  
 23 ble to participate in the arrangement is,  
 24 within a reasonable period before any year  
 25 (or if the plan elects to change the applica-

ble percentage after any increase in compensation, before the increase), given notice of the employee's rights and obligations under the arrangement.

The requirements of clauses (i) and (ii) of paragraph (12)(D) shall be met with respect to the notices described in clauses (ii) and (iii) of this subparagraph.

“(E) PARTICIPATION, WITHDRAWAL, AND VESTING REQUIREMENTS.—The requirements of this subparagraph are met if—

“(i) the arrangement requires that each employee eligible to participate in the arrangement (determined without regard to any minimum service requirement otherwise applicable under section 410(a) or the plan) commences participation in the arrangement no later than the 1st day of the 1st calendar quarter beginning after the date on which employee first becomes so eligible,

“(ii) the withdrawal requirements of paragraph (2)(B) are met with respect to all employer contributions (including matching and elective contributions) taken

1 into account in determining whether the  
 2 arrangement meets the requirements of  
 3 subparagraph (C), and

4 “(iii) the arrangement requires that  
 5 an employee’s right to the accrued benefit  
 6 derived from employer contributions de-  
 7 scribed in clause (ii) (other than elective  
 8 contributions) is nonforfeitable after the  
 9 employee has completed at least 2 years of  
 10 service.

11 “(F) CERTAIN WITHDRAWALS MUST BE  
 12 ALLOWED.—Notwithstanding any other provi-  
 13 sion of this subsection, the requirements of this  
 14 subparagraph are met if the arrangement al-  
 15 lows employees to elect to make permissible  
 16 withdrawals in accordance with section  
 17 414(w).”

18 (b) MATCHING CONTRIBUTIONS.—Section 401(m) of  
 19 the Internal Revenue Code of 1986 (relating to non-  
 20 discrimination test for matching contributions and em-  
 21 ployee contributions) is amended by redesignating para-  
 22 graph (12) as paragraph (13) and by inserting after para-  
 23 graph (11) the following new paragraph:

24 “(12) ALTERNATE METHOD FOR AUTOMATIC  
 25 CONTRIBUTION TRUSTS.—A defined contribution

1 plan shall be treated as meeting the requirements of  
 2 paragraph (2) with respect to matching contribu-  
 3 tions if the plan—

4 “(A) meets the contribution requirements  
 5 of subparagraphs (B)(i) and (C) of subsection  
 6 (k)(13);

7 “(B) meets the notice requirements of sub-  
 8 paragraph (D) of subsection (k)(13); and

9 “(C) meets the requirements of paragraph  
 10 (11)(B) (ii) and (iii).”.

11 (c) EXCLUSION FROM DEFINITION OF TOP-HEAVY  
 12 PLANS.—

13 (1) ELECTIVE CONTRIBUTION RULE.—Clause  
 14 (i) of section 416(g)(4)(H) of the Internal Revenue  
 15 Code of 1986 is amended by inserting “or  
 16 401(k)(13)” after “section 401(k)(12)”.

17 (2) MATCHING CONTRIBUTION RULE.—Clause  
 18 (ii) of section 416(g)(4)(H) of such Code is amended  
 19 by inserting “or 401(m)(12)” after “section  
 20 401(m)(11)”.

21 (d) SECTION 403(b) CONTRACTS.—Paragraph (11) of  
 22 section 401(m) of the Internal Revenue Code of 1986 is  
 23 amended by adding at the end the following:

24 “(C) SECTION 403(b) CONTRACTS.—An  
 25 annuity contract under section 403(b) shall be

1           treated as meeting the requirements of para-  
 2           graph (2) with respect to matching contribu-  
 3           tions if such contract meets requirements simi-  
 4           lar to the requirements under subparagraph  
 5           (A).”.

6           (e) PREEMPTION OF CONFLICTING STATE REGULA-  
 7   TION.—Section 514 of the Employee Retirement Income  
 8   Security of 1974 (29 U.S.C. 1144) is amended by insert-  
 9   ing at the end the following new subsection:

10       “(e) AUTOMATIC CONTRIBUTION ARRANGEMENTS.—

11           “(1) IN GENERAL.—Notwithstanding any other  
 12       provision of this section, any law of a State shall be  
 13       superseded if it would directly or indirectly prohibit  
 14       or restrict the inclusion in any plan of an eligible  
 15       automatic contribution arrangement.

16           “(2) ELIGIBLE AUTOMATIC CONTRIBUTION AR-  
 17       RANGEMENT.—For purposes of this subsection, the  
 18       term ‘eligible automatic contribution arrangement’  
 19       means an arrangement—

20           “(A) under which a participant may elect  
 21       to have the employer make payments as con-  
 22       tributions under the plan on behalf of the par-  
 23       ticipant, or to the participant directly in cash,

24           “(B) under which the participant is treated  
 25       as having elected to have the employer make

1       such contributions in an amount equal to a uni-  
 2       form percentage of compensation provided  
 3       under the plan until the participant specifically  
 4       elects not to have such contributions made (or  
 5       specifically elects to have such contributions  
 6       made at a different percentage),

7               “(C) under which contributions described  
 8       in subparagraph (B) are invested in accordance  
 9       with regulations prescribed by the Secretary  
 10       under section 404(c)(4), and

11              “(D) which meets the requirements of  
 12       paragraph (3).

13       “(3) NOTICE REQUIREMENTS.—

14              “(A) IN GENERAL.—The administrator of  
 15       an individual account plan shall, within a rea-  
 16       sonable period before each plan year, give to  
 17       each employee to whom an arrangement de-  
 18       scribed in paragraph (2) applies for such plan  
 19       year notice of the employee’s rights and obliga-  
 20       tions under the arrangement which—

21                   “(i) is sufficiently accurate and com-  
 22                   prehensive to apprise the employee of such  
 23                   rights and obligations, and



1 “(ii) is written in a manner calculated  
 2 to be understood by the average employee  
 3 to whom the arrangement applies.

4 “(B) TIME AND FORM OF NOTICE.—A no-  
 5 tice shall not be treated as meeting the require-  
 6 ments of subparagraph (A) with respect to an  
 7 employee unless—

8 “(i) the notice includes a notice ex-  
 9 plaining the employee’s right under the ar-  
 10 rangement to elect not to have elective con-  
 11 tributions made on the employee’s behalf  
 12 (or to elect to have such contributions  
 13 made at a different percentage),

14 “(ii) the employee has a reasonable  
 15 period of time after receipt of the notice  
 16 described in clause (i) and before the first  
 17 elective contribution is made to make such  
 18 election, and

19 “(iii) the notice explains how contribu-  
 20 tions made under the arrangement will be  
 21 invested in the absence of any investment  
 22 election by the employee.”.

23 (f) TREATMENT OF WITHDRAWALS OF CONTRIBU-  
 24 TIONS DURING FIRST 60 DAYS.—Section 414 of the In-

1 ternal Revenue Code of 1986 is amended by adding at the  
 2 end the following new subsection:

3 “(w) SPECIAL RULES FOR CERTAIN WITHDRAWALS  
 4 FROM ELIGIBLE AUTOMATIC CONTRIBUTION ARRANGE-  
 5 MENTS.—

6 “(1) IN GENERAL.—If an eligible automatic  
 7 contribution arrangement allows an employee to  
 8 elect to make permissible withdrawals—

9 “(A) the amount of any such withdrawal  
 10 shall be includible in the gross income of the  
 11 employee for the taxable year of the employee  
 12 in which the distribution is made,

13 “(B) no tax shall be imposed under section  
 14 72(t) with respect to the distribution, and

15 “(C) the arrangement shall not be treated  
 16 as violating any restriction on distributions  
 17 under this title solely by reason of allowing the  
 18 withdrawal.

19 In the case of any distribution to an employee by  
 20 reason of an election under this paragraph, employer  
 21 matching contributions shall be forfeited or subject  
 22 to such other treatment as the Secretary may pre-  
 23 scribe.

24 “(2) PERMISSIBLE WITHDRAWAL.—For pur-  
 25 poses of this subsection—

1           “(A) IN GENERAL.—The term ‘permissible  
2           withdrawal’ means any withdrawal from an eli-  
3           gible automatic contribution arrangement meet-  
4           ing the requirements of this paragraph which—

5                   “(i) is made pursuant to an election  
6                   by an employee, and

7                   “(ii) consists of elective contributions  
8                   described in paragraph (3)(B) (and earn-  
9                   ings attributable thereto).

10           “(B) TIME FOR MAKING ELECTION.—Sub-  
11           paragraph (A) shall not apply to an election by  
12           an employee unless the election is made no later  
13           than the date which is 60 days after the date  
14           of the first elective contribution with respect to  
15           the employee under the arrangement.

16           “(C) AMOUNT OF DISTRIBUTION.—Sub-  
17           paragraph (A) shall not apply to any election by  
18           an employee unless the amount of any distribu-  
19           tion by reason of the election is equal to the  
20           amount of elective contributions made with re-  
21           spect to the first payroll period to which the eli-  
22           gible automatic contribution arrangement ap-  
23           plies to the employee and any succeeding pay-  
24           roll period beginning before the effective date of  
25           the election (and earnings attributable thereto).

1           “(3) ELIGIBLE AUTOMATIC CONTRIBUTION AR-  
2           RANGEMENT.—For purposes of this subsection, the  
3           term ‘eligible automatic contribution arrangement’  
4           means an arrangement—

5                   “(A) under which a participant may elect  
6                   to have the employer make payments as con-  
7                   tributions under the plan on behalf of the par-  
8                   ticipant, or to the participant directly in cash,

9                   “(B) under which the participant is treated  
10                  as having elected to have the employer make  
11                  such contributions in an amount equal to a uni-  
12                  form percentage of compensation provided  
13                  under the plan until the participant specifically  
14                  elects not to have such contributions made (or  
15                  specifically elects to have such contributions  
16                  made at a different percentage),

17                  “(C) under which contributions described  
18                  in subparagraph (B) are invested in accordance  
19                  with regulations prescribed by the Secretary of  
20                  Labor under section 404(c)(4) of the Employee  
21                  Retirement Income Security Act of 1974, and

22                  “(D) which meets the requirements of  
23                  paragraph (4).

24           “(4) NOTICE REQUIREMENTS.—

1           “(A) IN GENERAL.—The administrator of  
 2           a plan containing an arrangement described in  
 3           paragraph (3) shall, within a reasonable period  
 4           before each plan year, give to each employee to  
 5           whom an arrangement described in paragraph  
 6           (3) applies for such plan year notice of the em-  
 7           ployee’s rights and obligations under the ar-  
 8           rangement which—

9                   “(i) is sufficiently accurate and com-  
 10                  prehensive to apprise the employee of such  
 11                  rights and obligations, and

12                  “(ii) is written in a manner calculated  
 13                  to be understood by the average employee  
 14                  to whom the arrangement applies.

15           “(B) TIME AND FORM OF NOTICE.—A no-  
 16           tice shall not be treated as meeting the require-  
 17           ments of subparagraph (A) with respect to an  
 18           employee unless—

19                   “(i) the notice includes a notice ex-  
 20                  plaining the employee’s right under the ar-  
 21                  rangement to elect not to have elective con-  
 22                  tributions made on the employee’s behalf  
 23                  (or to elect to have such contributions  
 24                  made at a different percentage),

1 “(ii) the employee has a reasonable  
 2 period of time after receipt of the notice  
 3 described in clause (i) and before the first  
 4 elective contribution is made to make such  
 5 election, and

6 “(iii) the notice explains how contribu-  
 7 tions made under the arrangement will be  
 8 invested in the absence of any investment  
 9 election by the employee.”.

10 (g) EFFECTIVE DATE.—

11 (1) IN GENERAL.—Except as provided by para-  
 12 graph (2), the amendments made by this section  
 13 shall apply to plan years beginning after December  
 14 31, 2005.

15 (2) SECTION 403(b) CONTRACTS.—The amend-  
 16 ments made by subsection (d) shall apply to years  
 17 ending after the date of the enactment of this Act.

18 **SEC. 1109. TREATMENT OF INVESTMENT OF ASSETS BY**  
 19 **PLAN WHERE PARTICIPANT FAILS TO EXER-**  
 20 **CISE INVESTMENT ELECTION.**

21 (a) IN GENERAL.—Section 404(c) of the Employee  
 22 Retirement Income Security Act of 1974 (29 U.S.C.  
 23 1104(c)) is amended by adding at the end the following  
 24 new paragraph:

1           “(4)     DEFAULT     INVESTMENT     ARRANGE-  
2     MENTS.—

3           “(A) IN GENERAL.—For purposes of para-  
4     graph (1), a participant in an individual ac-  
5     count plan meeting the notice requirements of  
6     subparagraph (B) shall be treated as exercising  
7     control over the assets in the account with re-  
8     spect to the amount of contributions and earn-  
9     ings which, in the absence of an investment  
10    election by the participant, are invested by the  
11    plan in accordance with regulations prescribed  
12    by the Secretary. The regulations under this  
13    subparagraph shall provide guidance on the ap-  
14    propriateness of designating default investments  
15    that include a mix of asset classes consistent  
16    with capital preservation, long-term capital ap-  
17    preciation, or a blend of both.

18           “(B) NOTICE REQUIREMENTS.—

19           “(i) IN GENERAL.—The requirements  
20     of this subparagraph are met if each  
21     participant—

22           “(I) receives, within a reasonable  
23     period of time before each plan year,  
24     a notice explaining the employee’s  
25     right under the plan to designate how

1 contributions and earnings will be in-  
 2 vested and explaining how, in the ab-  
 3 sence of any investment election by  
 4 the participant, such contributions  
 5 and earnings will be invested, and

6 “(II) has a reasonable period of  
 7 time after receipt of such notice and  
 8 before the beginning of the plan year  
 9 to make such designation.

10 “(ii) FORM OF NOTICE.—The require-  
 11 ments of clauses (i) and (ii) of section  
 12 401(k)(12)(D) of the Internal Revenue  
 13 Code of 1986 shall be met with respect to  
 14 the notices described in this subpara-  
 15 graph.”.

16 (b) EFFECTIVE DATE.—

17 (1) IN GENERAL.—The amendments made by  
 18 this section shall apply to plan years beginning after  
 19 December 31, 2005.

20 (2) REGULATIONS.—Final regulations under  
 21 section 404(c)(4)(A) of the Employee Retirement In-  
 22 come Security Act of 1974 (as added by this section)  
 23 shall be issued no later than 6 months after the date  
 24 of the enactment of this Act.



1 **SEC. 1110. CLARIFICATION OF FIDUCIARY RULES.**

2 (a) IN GENERAL.—Not later than 1 year after the  
3 date of the enactment of this Act, the Secretary of Labor  
4 shall issue final regulations clarifying that the selection  
5 of an annuity contract as an optional form of distribution  
6 from an individual account plan to a participant or  
7 beneficiary—

8 (1) is not subject to the safest available annuity  
9 standard under Interpretive Bulletin 95–1 (29  
10 C.F.R. 2509.95–1), and

11 (2) is subject to all otherwise applicable fidu-  
12 ciary standards.

13 (b) EFFECTIVE DATE.—This section shall take effect  
14 on the date of enactment of this Act.

15 **TITLE XII—UNITED STATES TAX**  
16 **COURT MODERNIZATION**

17 **SEC. 1200. AMENDMENT OF 1986 CODE.**

18 Except as otherwise expressly provided, whenever in  
19 this title an amendment or repeal is expressed in terms  
20 of an amendment to, or repeal of, a section or other provi-  
21 sion, the reference shall be considered to be made to a  
22 section or other provision of the Internal Revenue Code  
23 of 1986.

1 **SEC. 1201. ANNUITIES FOR SURVIVORS OF TAX COURT**  
2 **JUDGES WHO ARE ASSASSINATED.**

3 (a) **ELIGIBILITY IN CASE OF DEATH BY ASSASSINA-**  
4 **TION.**—Subsection (h) of section 7448 (relating to annu-

5 ities to surviving spouses and dependent children of

6 judges) is amended to read as follows:

7 “(h) **ENTITLEMENT TO ANNUITY.**—

8 “(1) **IN GENERAL.**—

9 “(A) **ANNUITY TO SURVIVING SPOUSE.**—If

10 a judge described in paragraph (2) is survived

11 by a surviving spouse but not by a dependent

12 child, there shall be paid to such surviving

13 spouse an annuity beginning with the day of the

14 death of the judge or following the surviving

15 spouse’s attainment of the age of 50 years,

16 whichever is the later, in an amount computed

17 as provided in subsection (m).

18 “(B) **ANNUITY TO CHILD.**—If such a judge

19 is survived by a surviving spouse and a depend-

20 ent child or children, there shall be paid to such

21 surviving spouse an immediate annuity in an

22 amount computed as provided in subsection

23 (m), and there shall also be paid to or on behalf

24 of each such child an immediate annuity equal

25 to the lesser of—

1 “(i) 10 percent of the average annual  
 2 salary of such judge (determined in accord-  
 3 ance with subsection (m)), or

4 “(ii) 20 percent of such average an-  
 5 nual salary, divided by the number of such  
 6 children.

7 “(C) ANNUITY TO SURVIVING DEPENDENT  
 8 CHILDREN.—If such a judge leaves no surviving  
 9 spouse but leaves a surviving dependent child or  
 10 children, there shall be paid to or on behalf of  
 11 each such child an immediate annuity equal to  
 12 the lesser of—

13 “(i) 20 percent of the average annual  
 14 salary of such judge (determined in accord-  
 15 ance with subsection (m)), or

16 “(ii) 40 percent of such average an-  
 17 nual salary, divided by the number of such  
 18 children.

19 “(2) COVERED JUDGES.—Paragraph (1) applies  
 20 to any judge electing under subsection (b)—

21 “(A) who dies while a judge after having  
 22 rendered at least 5 years of civilian service com-  
 23 puted as prescribed in subsection (n), for the  
 24 last 5 years of which the salary deductions pro-  
 25 vided for by subsection (c)(1) or the deposits

required by subsection (d) have actually been made or the salary deductions required by the civil service retirement laws have actually been made, or

“(B) who dies by assassination after having rendered less than 5 years of civilian service computed as prescribed in subsection (n) if, for the period of such service, the salary deductions provided for by subsection (c)(1) or the deposits required by subsection (d) have actually been made.

“(3) TERMINATION OF ANNUITY.—

“(A) IN THE CASE OF A SURVIVING SPOUSE.—The annuity payable to a surviving spouse under this subsection shall be terminable upon such surviving spouse’s death or such surviving spouse’s remarriage before attaining age 55.

“(B) IN THE CASE OF A CHILD.—The annuity payable to a child under this subsection shall be terminable upon (i) the child attaining the age of 18 years, (ii) the child’s marriage, or (iii) the child’s death, whichever first occurs, except that if such child is incapable of self-support by reason of mental or physical disability

1           the child's annuity shall be terminable only  
 2           upon death, marriage, or recovery from such  
 3           disability.

4                   “(C) IN THE CASE OF A DEPENDENT  
 5           CHILD AFTER DEATH OF SURVIVING SPOUSE.—  
 6           In case of the death of a surviving spouse of a  
 7           judge leaving a dependent child or children of  
 8           the judge surviving such spouse, the annuity of  
 9           such child or children shall be recomputed and  
 10          paid as provided in paragraph (1)(C).

11                   “(D) RECOMPUTATION.—In any case in  
 12          which the annuity of a dependent child is termi-  
 13          nated under this subsection, the annuities of  
 14          any remaining dependent child or children,  
 15          based upon the service of the same judge, shall  
 16          be recomputed and paid as though the child  
 17          whose annuity was so terminated had not sur-  
 18          vived such judge.

19                   “(4) SPECIAL RULE FOR ASSASSINATED  
 20          JUDGES.—In the case of a survivor or survivors of  
 21          a judge described in paragraph (2)(B), there shall be  
 22          deducted from the annuities otherwise payable under  
 23          this section an amount equal to—

24                           “(A) the amount of salary deductions pro-  
 25          vided for by subsection (c)(1) that would have

1           been made if such deductions had been made  
 2           for 5 years of civilian service computed as pre-  
 3           scribed in subsection (n) before the judge's  
 4           death, reduced by

5           “(B) the amount of such salary deductions  
 6           that were actually made before the date of the  
 7           judge's death.’.”

8           (b) DEFINITION OF ASSASSINATION.—Section  
 9   7448(a) (relating to definitions) is amended by adding at  
 10 the end the following new paragraph:

11           “(8) The terms ‘assassinated’ and ‘assassina-  
 12          tion’ mean the killing of a judge that is motivated  
 13          by the performance by that judge of his or her offi-  
 14          cial duties.”.

15           (c) DETERMINATION OF ASSASSINATION.—Sub-  
 16 section (i) of section 7448 is amended—

17           (1) by striking the subsection heading and in-  
 18          serting the following:

19           “(i) DETERMINATIONS BY CHIEF JUDGE.—

20           “(1) DEPENDENCY AND DISABILITY.—”,

21           (2) by moving the text 2 ems to the right, and

22           (3) by adding at the end the following new  
 23 paragraph:

24           “(2) ASSASSINATION.—The chief judge shall  
 25          determine whether the killing of a judge was an as-

1       sassination, subject to review only by the Tax Court.  
 2       The head of any Federal agency that investigates  
 3       the killing of a judge shall provide information to  
 4       the chief judge that would assist the chief judge in  
 5       making such a determination.”.

6       (d) COMPUTATION OF ANNUITIES.—Subsection (m)  
 7 of section 7448 is amended—

8               (1) by striking the subsection heading and in-  
 9       serting the following:

10       “(m) COMPUTATION OF ANNUITIES.—

11               “(1) IN GENERAL.—”,

12               (2) by moving the text 2 ems to the right, and

13               (3) by adding at the end the following new  
 14       paragraph:

15               “(2) ASSASSINATED JUDGES.—In the case of a  
 16       judge who is assassinated and who has served less  
 17       than 3 years, the annuity of the surviving spouse of  
 18       such judge shall be based upon the average annual  
 19       salary received by such judge for judicial service.”.

20       (e) OTHER BENEFITS.—Section 7448 is amended by  
 21       adding at the end the following:

22       “(u) OTHER BENEFITS.—In the case of a judge who  
 23       is assassinated, an annuity shall be paid under this section  
 24       notwithstanding a survivor’s eligibility for or receipt of  
 25       benefits under chapter 81 of title 5, United States Code,

1 except that the annuity for which a surviving spouse is  
 2 eligible under this section shall be reduced to the extent  
 3 that the total benefits paid under this section and chapter  
 4 81 of that title for any year would exceed the current sal-  
 5 ary for that year of the office of the judge.”.

6 **SEC. 1202. COST-OF-LIVING ADJUSTMENTS FOR TAX COURT**  
 7 **JUDICIAL SURVIVOR ANNUITIES.**

8 (a) IN GENERAL.—Subsection (s) of section 7448  
 9 (relating to annuities to surviving spouses and dependent  
 10 children of judges) is amended to read as follows:

11 “(s) INCREASES IN SURVIVOR ANNUITIES.—Each  
 12 time that an increase is made under section 8340(b) of  
 13 title 5, United States Code, in annuities payable under  
 14 subchapter III of chapter 83 of that title, each annuity  
 15 payable from the survivors annuity fund under this section  
 16 shall be increased at the same time by the same percent-  
 17 age by which annuities are increased under such section  
 18 8340(b).”.

19 (b) EFFECTIVE DATE.—The amendment made by  
 20 this section shall apply with respect to increases made  
 21 under section 8340(b) of title 5, United States Code, in  
 22 annuities payable under subchapter III of chapter 83 of  
 23 that title, taking effect after the date of the enactment  
 24 of this Act.



1 **SEC. 1203. LIFE INSURANCE COVERAGE FOR TAX COURT**  
2 **JUDGES.**

3 (a) IN GENERAL.—Section 7447 (relating to retire-  
4 ment of judges) is amended by adding at the end the fol-  
5 lowing new subsection:

6 “(j) LIFE INSURANCE COVERAGE.—For purposes of  
7 chapter 87 of title 5, United States Code (relating to life  
8 insurance), any individual who is serving as a judge of  
9 the Tax Court or who is retired under this section is  
10 deemed to be an employee who is continuing in active em-  
11 ployment.”.

12 (b) EFFECTIVE DATE.—The amendment made by  
13 this section shall apply to any individual serving as a judge  
14 of the United States Tax Court or to any retired judge  
15 of the United States Tax Court on the date of the enact-  
16 ment of this Act.

17 **SEC. 1204. COST OF LIFE INSURANCE COVERAGE FOR TAX**  
18 **COURT JUDGES AGE 65 OR OVER.**

19 Section 7472 (relating to expenditures) is amended  
20 by inserting after the first sentence the following new sen-  
21 tence: “Notwithstanding any other provision of law, the  
22 Tax Court is authorized to pay on behalf of its judges,  
23 age 65 or over, any increase in the cost of Federal Em-  
24 ployees’ Group Life Insurance imposed after April 24,  
25 1999, including any expenses generated by such payments,  
26 as authorized by the chief judge in a manner consistent

1 with such payments authorized by the Judicial Conference  
 2 of the United States pursuant to section 604(a)(5) of title  
 3 28, United States Code.”

4 **SEC. 1205. MODIFICATION OF TIMING OF LUMP-SUM PAY-**  
 5 **MENT OF JUDGES’ ACCRUED ANNUAL LEAVE.**

6 (a) IN GENERAL.—Section 7443 (relating to mem-  
 7 bership of the Tax Court) is amended by adding at the  
 8 end the following new subsection:

9 “(h) LUMP-SUM PAYMENT OF JUDGES’ ACCRUED  
 10 ANNUAL LEAVE.—Notwithstanding the provisions of sec-  
 11 tions 5551 and 6301 of title 5, United States Code, when  
 12 an individual subject to the leave system provided in chap-  
 13 ter 63 of that title is appointed by the President to be  
 14 a judge of the Tax Court, the individual shall be entitled  
 15 to receive, upon appointment to the Tax Court, a lump-  
 16 sum payment from the Tax Court of the accumulated and  
 17 accrued current annual leave standing to the individual’s  
 18 credit as certified by the agency from which the individual  
 19 resigned.”.

20 (b) EFFECTIVE DATE.—The amendment made by  
 21 this section shall apply to any judge of the United States  
 22 Tax Court who has an outstanding leave balance on the  
 23 date of the enactment of this Act and to any individual  
 24 appointed by the President to serve as a judge of the  
 25 United States Tax Court after such date.

1 **SEC. 1206. PARTICIPATION OF TAX COURT JUDGES IN THE**  
 2 **THRIFT SAVINGS PLAN.**

3 (a) IN GENERAL.—Section 7447 (relating to retire-  
 4 ment of judges), as amended by this Act, is amended by  
 5 adding at the end the following new subsection:

6 “(k) THRIFT SAVINGS PLAN.—

7 “(1) ELECTION TO CONTRIBUTE.—

8 “(A) IN GENERAL.—A judge of the Tax  
 9 Court may elect to contribute to the Thrift Sav-  
 10 ings Fund established by section 8437 of title  
 11 5, United States Code.

12 “(B) PERIOD OF ELECTION.—An election  
 13 may be made under this paragraph only during  
 14 a period provided under section 8432(b) of title  
 15 5, United States Code, for individuals subject to  
 16 chapter 84 of such title.

17 “(2) APPLICABILITY OF TITLE 5 PROVISIONS.—  
 18 Except as otherwise provided in this subsection, the  
 19 provisions of subchapters III and VII of chapter 84  
 20 of title 5, United States Code, shall apply with re-  
 21 spect to a judge who makes an election under para-  
 22 graph (1).

23 “(3) SPECIAL RULES.—

24 “(A) AMOUNT CONTRIBUTED.—The  
 25 amount contributed by a judge to the Thrift  
 26 Savings Fund in any pay period shall not ex-

ceed the maximum percentage of such judge's basic pay for such period as allowable under section 8440f of title 5, United States Code. Basic pay does not include any retired pay paid pursuant to this section.

“(B) CONTRIBUTIONS FOR BENEFIT OF JUDGE.—No contributions may be made for the benefit of a judge under section 8432(c) of title 5, United States Code.

“(C) APPLICABILITY OF SECTION 8433(b) OF TITLE 5 WHETHER OR NOT JUDGE RETIRES.—Section 8433(b) of title 5, United States Code, applies with respect to a judge who makes an election under paragraph (1) and who either—

“(i) retires under subsection (b), or

“(ii) ceases to serve as a judge of the Tax Court but does not retire under subsection (b).

Retirement under subsection (b) is a separation from service for purposes of subchapters III and VII of chapter 84 of that title.

“(D) APPLICABILITY OF SECTION 8351(b)(5) OF TITLE 5.—The provisions of section 8351(b)(5) of title 5, United States Code,

1           shall apply with respect to a judge who makes  
2           an election under paragraph (1).

3           “(E) EXCEPTION.—Notwithstanding sub-  
4           paragraph (C), if any judge retires under this  
5           section, or resigns without having met the age  
6           and service requirements set forth under sub-  
7           section (b)(2), and such judge’s nonforfeitable  
8           account balance is less than an amount that the  
9           Executive Director of the Office of Personnel  
10          Management prescribes by regulation, the Exec-  
11          utive Director shall pay the nonforfeitable ac-  
12          count balance to the participant in a single pay-  
13          ment.”.

14          (b) EFFECTIVE DATE.—The amendment made by  
15          this section shall take effect on the date of the enactment  
16          of this Act, except that United States Tax Court judges  
17          may only begin to participate in the Thrift Savings Plan  
18          at the next open season beginning after such date.

19      **SEC. 1207. EXEMPTION OF TEACHING COMPENSATION OF**  
20                              **RETIRED JUDGES FROM LIMITATION ON**  
21                              **OUTSIDE EARNED INCOME.**

22          (a) IN GENERAL.—Section 7447 (relating to retire-  
23          ment of judges), as amended by this Act, is amended by  
24          adding at the end the following new subsection:

1       “(1) TEACHING COMPENSATION OF RETIRED  
 2 JUDGES.—For purposes of the limitation under section  
 3 501(a) of the Ethics in Government Act of 1978 (5 U.S.C.  
 4 App.), any compensation for teaching approved under sec-  
 5 tion 502(a)(5) of such Act shall not be treated as outside  
 6 earned income when received by a judge of the Tax Court  
 7 who has retired under subsection (b) for teaching per-  
 8 formed during any calendar year for which such a judge  
 9 has met the requirements of subsection (c), as certified  
 10 by the chief judge of the Tax Court.”.

11       (b) EFFECTIVE DATE.—The amendment made by  
 12 this section shall apply to any individual serving as a re-  
 13 tired judge of the United States Tax Court on or after  
 14 the date of the enactment of this Act.

15 **SEC. 1208. GENERAL PROVISIONS RELATING TO MAG-**  
 16 **ISTRATE JUDGES OF THE TAX COURT.**

17       (a) TITLE OF SPECIAL TRIAL JUDGE CHANGED TO  
 18 MAGISTRATE JUDGE OF THE TAX COURT.—The heading  
 19 of section 7443A is amended to read as follows:

20 **“SEC. 7443A. MAGISTRATE JUDGES OF THE TAX COURT.”**

21       (b) APPOINTMENT, TENURE, AND REMOVAL.—Sub-  
 22 section (a) of section 7443A is amended to read as follows:

23       “(a) APPOINTMENT, TENURE, AND REMOVAL.—

24               “(1) APPOINTMENT.—The chief judge may,  
 25 from time to time, appoint and reappoint magistrate

1 judges of the Tax Court for a term of 8 years. The  
2 magistrate judges of the Tax Court shall proceed  
3 under such rules as may be promulgated by the Tax  
4 Court.

5 “(2) REMOVAL.—Removal of a magistrate  
6 judge of the Tax Court during the term for which  
7 he or she is appointed shall be only for incom-  
8 petency, misconduct, neglect of duty, or physical or  
9 mental disability, but the office of a magistrate  
10 judge of the Tax Court shall be terminated if the  
11 judges of the Tax Court determine that the services  
12 performed by the magistrate judge of the Tax Court  
13 are no longer needed. Removal shall not occur unless  
14 a majority of all the judges of the Tax Court concur  
15 in the order of removal. Before any order of removal  
16 shall be entered, a full specification of the charges  
17 shall be furnished to the magistrate judge of the Tax  
18 Court, and he or she shall be accorded by the judges  
19 of the Tax Court an opportunity to be heard on the  
20 charges.”.

21 (c) SALARY.—Section 7443A(d) (relating to salary)  
22 is amended by striking “90” and inserting “92”.

23 (d) EXEMPTION FROM FEDERAL LEAVE PROVI-  
24 SIONS.—Section 7443A is amended by adding at the end  
25 the following new subsection:

1       “(f) EXEMPTION FROM FEDERAL LEAVE PROVI-  
2       SIONS.—

3               “(1) IN GENERAL.—A magistrate judge of the  
4       Tax Court appointed under this section shall be ex-  
5       empt from the provisions of subchapter I of chapter  
6       63 of title 5, United States Code.

7               “(2) TREATMENT OF UNUSED LEAVE.—

8               “(A) AFTER SERVICE AS MAGISTRATE  
9       JUDGE.—If an individual who is exempted  
10      under paragraph (1) from the subchapter re-  
11      ferred to in such paragraph was previously sub-  
12      ject to such subchapter and, without a break in  
13      service, again becomes subject to such sub-  
14      chapter on completion of the individual’s service  
15      as a magistrate judge, the unused annual leave  
16      and sick leave standing to the individual’s cred-  
17      it when such individual was exempted from this  
18      subchapter is deemed to have remained to the  
19      individual’s credit.

20              “(B) COMPUTATION OF ANNUITY.—In  
21      computing an annuity under section 8339 of  
22      title 5, United States Code, the total service of  
23      an individual specified in subparagraph (A) who  
24      retires on an immediate annuity or dies leaving  
25      a survivor or survivors entitled to an annuity



1 includes, without regard to the limitations im-  
 2 posed by subsection (f) of such section 8339,  
 3 the days of unused sick leave standing to the  
 4 individual's credit when such individual was ex-  
 5 empted from subchapter I of chapter 63 of title  
 6 5, United States Code, except that these days  
 7 will not be counted in determining average pay  
 8 or annuity eligibility.

9 “(C) LUMP SUM PAYMENT.—Any accumu-  
 10 lated and current accrued annual leave or vaca-  
 11 tion balances credited to a magistrate judge as  
 12 of the date of the enactment of this subsection  
 13 shall be paid in a lump sum at the time of sepa-  
 14 ration from service pursuant to the provisions  
 15 and restrictions set forth in section 5551 of  
 16 title 5, United States Code, and related provi-  
 17 sions referred to in such section.”.

18 (e) CONFORMING AMENDMENTS.—

19 (1) The heading of subsection (b) of section  
 20 7443A is amended by striking “SPECIAL TRIAL  
 21 JUDGES” and inserting “Magistrate Judges of the  
 22 Tax Court”.

23 (2) Section 7443A(b) is amended by striking  
 24 “special trial judges of the court” and inserting  
 25 “magistrate judges of the Tax Court”.

1           (3) Subsections (c) and (d) of section 7443A  
 2           are amended by striking “special trial judge” and  
 3           inserting “magistrate judge of the Tax Court” each  
 4           place it appears.

5           (4) Section 7443A(e) is amended by striking  
 6           “special trial judges” and inserting “magistrate  
 7           judges of the Tax Court”.

8           (5) Section 7456(a) is amended by striking  
 9           “special trial judge” each place it appears and in-  
 10          serting “magistrate judge”.

11          (6) Subsection (c) of section 7471 is  
 12          amended—

13                (A) by striking the subsection heading and  
 14                inserting “MAGISTRATE JUDGES OF THE TAX  
 15                COURT.—”, and

16                (B) by striking “special trial judges” and  
 17                inserting “magistrate judges”.

18 **SEC. 1209. ANNUITIES TO SURVIVING SPOUSES AND DE-**  
 19 **PENDENT CHILDREN OF MAGISTRATE**  
 20 **JUDGES OF THE TAX COURT.**

21          (a) DEFINITIONS.—Section 7448(a) (relating to defi-  
 22          nitions), as amended by this Act, is amended by redesign-  
 23          ating paragraphs (5), (6), (7), and (8) as paragraphs (7),  
 24          (8), (9), and (10), respectively, and by inserting after  
 25          paragraph (4) the following new paragraphs:

1           “(5) The term ‘magistrate judge’ means a judi-  
 2           cial officer appointed pursuant to section 7443A, in-  
 3           cluding any individual receiving an annuity under  
 4           section 7443B, or chapters 83 or 84, as the case  
 5           may be, of title 5, United States Code, whether or  
 6           not performing judicial duties under section 7443C.

7           “(6) The term ‘magistrate judge’s salary’  
 8           means the salary of a magistrate judge received  
 9           under section 7443A(d), any amount received as an  
 10          annuity under section 7443B, or chapters 83 or 84,  
 11          as the case may be, of title 5, United States Code,  
 12          and compensation received under section 7443C.”.

13          (b) ELECTION.—Subsection (b) of section 7448 (re-  
 14          lating to annuities to surviving spouses and dependent  
 15          children of judges) is amended—

16               (1) by striking the subsection heading and in-  
 17               serting the following:

18               “(b) ELECTION.—

19                       “(1) JUDGES.—”,

20                       (2) by moving the text 2 ems to the right, and

21                       (3) by adding at the end the following new  
 22          paragraph:

23               “(2) MAGISTRATE JUDGES.—Any magistrate  
 24          judge may by written election filed with the chief  
 25          judge bring himself or herself within the purview of

1       this section. Such election shall be filed not later  
2       than the later of 6 months after—

3               “(A) 6 months after the date of the enact-  
4               ment of this paragraph,

5               “(B) the date the judge takes office, or

6               “(C) the date the judge marries.”.

7       (c) CONFORMING AMENDMENTS.—

8               (1) The heading of section 7448 is amended by  
9       inserting “**AND MAGISTRATE JUDGES**” after  
10      “**JUDGES**”.

11              (2) The item relating to section 7448 in the  
12      table of sections for part I of subchapter C of chap-  
13      ter 76 is amended by inserting “and magistrate  
14      judges” after “judges”.

15              (3) Subsections (c)(1), (d), (f), (g), (h), (j),  
16      (m), (n), and (u) of section 7448, as amended by  
17      this Act, are each amended—

18               (A) by inserting “or magistrate judge”  
19               after “judge” each place it appears other than  
20               in the phrase “chief judge”, and

21               (B) by inserting “or magistrate judge’s”  
22               after “judge’s” each place it appears.

23              (4) Section 7448(c) is amended—

1 (A) in paragraph (1), by striking “Tax  
 2 Court judges” and inserting “Tax Court judi-  
 3 cial officers”,

4 (B) in paragraph (2)—

5 (i) in subparagraph (A), by inserting  
 6 “and section 7443A(d)” after “(a)(4)”,  
 7 and

8 (ii) in subparagraph (B), by striking  
 9 “subsection (a)(4)” and inserting “sub-  
 10 sections (a)(4) and (a)(6)”.

11 (5) Section 7448(g) is amended by inserting  
 12 “or section 7443B” after “section 7447” each place  
 13 it appears, and by inserting “or an annuity” after  
 14 “retired pay”.

15 (6) Section 7448(j)(1) is amended—

16 (A) in subparagraph (A), by striking  
 17 “service or retired” and inserting “service, re-  
 18 tired”, and by inserting “, or receiving any an-  
 19 nuity under section 7443B or chapters 83 or 84  
 20 of title 5, United States Code,” after “section  
 21 7447”, and

22 (B) in the last sentence, by striking “sub-  
 23 sections (a) (6) and (7)” and inserting “para-  
 24 graphs (8) and (9) of subsection (a)”.

1           (7) Section 7448(m)(1), as amended by this  
2    Act, is amended—

3                   (A) by inserting “or any annuity under  
4           section 7443B or chapters 83 or 84 of title 5,  
5           United States Code” after “7447(d)”, and

6                   (B) by inserting “or 7443B(m)(1)(B) after  
7           “7447(f)(4)”.

8           (8) Section 7448(n) is amended by inserting  
9    “his years of service pursuant to any appointment  
10   under section 7443A,” after “of the Tax Court,”.

11           (9) Section 3121(b)(5)(E) is amended by in-  
12   serting “or magistrate judge” before “of the United  
13   States Tax Court”.

14           (10) Section 210(a)(5)(E) of the Social Secu-  
15   rity Act is amended by inserting “or magistrate  
16   judge” before “of the United States Tax Court”.

17   **SEC. 1210. RETIREMENT AND ANNUITY PROGRAM.**

18           (a) RETIREMENT AND ANNUITY PROGRAM.—Part I  
19   of subchapter C of chapter 76 is amended by inserting  
20   after section 7443A the following new section:

21   **“SEC. 7443B. RETIREMENT FOR MAGISTRATE JUDGES OF**  
22                   **THE TAX COURT.**

23           “(a) RETIREMENT BASED ON YEARS OF SERVICE.—  
24   A magistrate judge of the Tax Court to whom this section  
25   applies and who retires from office after attaining the age

1 of 65 years and serving at least 14 years, whether continu-  
 2 ously or otherwise, as such magistrate judge shall, subject  
 3 to subsection (f), be entitled to receive, during the remain-  
 4 der of the magistrate judge's lifetime, an annuity equal  
 5 to the salary being received at the time the magistrate  
 6 judge leaves office.

7       “(b) RETIREMENT UPON FAILURE OF REAPPOINT-  
 8 MENT.—A magistrate judge of the Tax Court to whom  
 9 this section applies who is not reappointed following the  
 10 expiration of the term of office of such magistrate judge  
 11 and who retires upon the completion of the term shall,  
 12 subject to subsection (f), be entitled to receive, upon at-  
 13 taining the age of 65 years and during the remainder of  
 14 such magistrate judge's lifetime, an annuity equal to that  
 15 portion of the salary being received at the time the mag-  
 16 istrate judge leaves office which the aggregate number of  
 17 years of service, not to exceed 14, bears to 14, if—

18               “(1) such magistrate judge has served at least  
 19       1 full term as a magistrate judge, and

20               “(2) not earlier than 9 months before the date  
 21       on which the term of office of such magistrate judge  
 22       expires, and not later than 6 months before such  
 23       date, such magistrate judge notified the chief judge  
 24       of the Tax Court in writing that such magistrate

1 judge was willing to accept reappointment to the po-  
2 sition in which such magistrate judge was serving.

3 “(c) SERVICE OF AT LEAST 8 YEARS.—A magistrate  
4 judge of the Tax Court to whom this section applies and  
5 who retires after serving at least 8 years, whether continu-  
6 ously or otherwise, as such a magistrate judge shall, sub-  
7 ject to subsection (f), be entitled to receive, upon attaining  
8 the age of 65 years and during the remainder of the mag-  
9 istrate judge’s lifetime, an annuity equal to that portion  
10 of the salary being received at the time the magistrate  
11 judge leaves office which the aggregate number of years  
12 of service, not to exceed 14, bears to 14. Such annuity  
13 shall be reduced by  $\frac{1}{6}$  of 1 percent for each full month  
14 such magistrate judge was under the age of 65 at the time  
15 the magistrate judge left office, except that such reduction  
16 shall not exceed 20 percent.

17 “(d) RETIREMENT FOR DISABILITY.—A magistrate  
18 judge of the Tax Court to whom this section applies, who  
19 has served at least 5 years, whether continuously or other-  
20 wise, as such a magistrate judge and who retires or is re-  
21 moved from office upon the sole ground of mental or phys-  
22 ical disability shall, subject to subsection (f), be entitled  
23 to receive, during the remainder of the magistrate judge’s  
24 lifetime, an annuity equal to 40 percent of the salary being  
25 received at the time of retirement or removal or, in the



1 case of a magistrate judge who has served for at least 10  
 2 years, an amount equal to that proportion of the salary  
 3 being received at the time of retirement or removal which  
 4 the aggregate number of years of service, not to exceed  
 5 14, bears to 14.

6 “(e) COST-OF-LIVING ADJUSTMENTS.—A magistrate  
 7 judge of the Tax Court who is entitled to an annuity under  
 8 this section is also entitled to a cost-of-living adjustment  
 9 in such annuity, calculated and payable in the same man-  
 10 ner as adjustments under section 8340(b) of title 5,  
 11 United States Code, except that any such annuity, as in-  
 12 creased under this subsection, may not exceed the salary  
 13 then payable for the position from which the magistrate  
 14 judge retired or was removed.

15 “(f) ELECTION; ANNUITY IN LIEU OF OTHER ANNU-  
 16 ITIES.—

17 “(1) IN GENERAL.—A magistrate judge of the  
 18 Tax Court shall be entitled to an annuity under this  
 19 section if the magistrate judge elects an annuity  
 20 under this section by notifying the chief judge of the  
 21 Tax Court not later than the later of—

22 “(A) 5 years after the magistrate judge of  
 23 the Tax Court begins judicial service, or

24 “(B) 5 years after the date of the enact-  
 25 ment of this subsection.

1 Such notice shall be given in accordance with proce-  
 2 dures prescribed by the Tax Court.

3 “(2) ANNUITY IN LIEU OF OTHER ANNUITY.—

4 A magistrate judge who elects to receive an annuity  
 5 under this section shall not be entitled to receive—

6 “(A) any annuity to which such magistrate  
 7 judge would otherwise have been entitled under  
 8 subchapter III of chapter 83, or under chapter  
 9 84 (except for subchapters III and VII), of title  
 10 5, United States Code, for service performed as  
 11 a magistrate or otherwise,

12 “(B) an annuity or salary in senior status  
 13 or retirement under section 371 or 372 of title  
 14 28, United States Code,

15 “(C) retired pay under section 7447, or

16 “(D) retired pay under section 7296 of  
 17 title 38, United States Code.

18 “(3) COORDINATION WITH TITLE 5.—A mag-  
 19 istrate judge of the Tax Court who elects to receive  
 20 an annuity under this section—

21 “(A) shall not be subject to deductions and  
 22 contributions otherwise required by section  
 23 8334(a) of title 5, United States Code,

1           “(B) shall be excluded from the operation  
 2           of chapter 84 (other than subchapters III and  
 3           VII) of such title 5, and

4           “(C) is entitled to a lump-sum credit under  
 5           section 8342(a) or 8424 of such title 5, as the  
 6           case may be.

7           “(g) CALCULATION OF SERVICE.—For purposes of  
 8           calculating an annuity under this section—

9           “(1) service as a magistrate judge of the Tax  
 10          Court to whom this section applies may be credited,  
 11          and

12          “(2) each month of service shall be credited as  
 13           $\frac{1}{12}$  of a year, and the fractional part of any month  
 14          shall not be credited.

15          “(h) COVERED POSITIONS AND SERVICE.—This sec-  
 16          tion applies to any magistrate judge of the Tax Court or  
 17          special trial judge of the Tax Court appointed under this  
 18          subchapter, but only with respect to service as such a mag-  
 19          istrate judge or special trial judge after a date not earlier  
 20          than 9½ years before the date of the enactment of this  
 21          subsection.

22          “(i) PAYMENTS PURSUANT TO COURT ORDER.—

23          “(1) IN GENERAL.—Payments under this sec-  
 24          tion which would otherwise be made to a magistrate  
 25          judge of the Tax Court based upon his or her service

1 shall be paid (in whole or in part) by the chief judge  
 2 of the Tax Court to another person if and to the ex-  
 3 tent expressly provided for in the terms of any court  
 4 decree of divorce, annulment, or legal separation, or  
 5 the terms of any court order or court-approved prop-  
 6 erty settlement agreement incident to any court de-  
 7 cree of divorce, annulment, or legal separation. Any  
 8 payment under this paragraph to a person bars re-  
 9 covery by any other person.

10 “(2) REQUIREMENTS FOR PAYMENT.—Para-  
 11 graph (1) shall apply only to payments made by the  
 12 chief judge of the Tax Court after the date of re-  
 13 ceipt by the chief judge of written notice of such de-  
 14 cree, order, or agreement, and such additional infor-  
 15 mation as the chief judge may prescribe.

16 “(3) COURT DEFINED.—For purposes of this  
 17 subsection, the term ‘court’ means any court of any  
 18 State, the District of Columbia, the Commonwealth  
 19 of Puerto Rico, Guam, the Northern Mariana Is-  
 20 lands, or the Virgin Islands, and any Indian tribal  
 21 court or courts of Indian offense.

22 “(j) DEDUCTIONS, CONTRIBUTIONS, AND DEPOS-  
 23 ITS.—

24 “(1) DEDUCTIONS.—Beginning with the next  
 25 pay period after the chief judge of the Tax Court re-

1 ceives a notice under subsection (f) that a mag-  
 2 istrate judge of the Tax Court has elected an annu-  
 3 ity under this section, the chief judge shall deduct  
 4 and withhold 1 percent of the salary of such mag-  
 5 istrate judge. Amounts shall be so deducted and  
 6 withheld in a manner determined by the chief judge.  
 7 Amounts deducted and withheld under this sub-  
 8 section shall be deposited in the Treasury of the  
 9 United States to the credit of the Tax Court Judi-  
 10 cial Officers' Retirement Fund. Deductions under  
 11 this subsection from the salary of a magistrate judge  
 12 shall terminate upon the retirement of the mag-  
 13 istrate judge or upon completion of 14 years of serv-  
 14 ice for which contributions under this section have  
 15 been made, whether continuously or otherwise, as  
 16 calculated under subsection (g), whichever occurs  
 17 first.

18 “(2) CONSENT TO DEDUCTIONS; DISCHARGE OF  
 19 CLAIMS.—Each magistrate judge of the Tax Court  
 20 who makes an election under subsection (f) shall be  
 21 deemed to consent and agree to the deductions from  
 22 salary which are made under paragraph (1). Pay-  
 23 ment of such salary less such deductions (and any  
 24 deductions made under section 7448) is a full and  
 25 complete discharge and acquittance of all claims and

1 demands for all services rendered by such magistrate  
 2 judge during the period covered by such payment,  
 3 except the right to those benefits to which the mag-  
 4 istrate judge is entitled under this section (and sec-  
 5 tion 7448).

6 “(k) DEPOSITS FOR PRIOR SERVICE.—Each mag-  
 7 istrate judge of the Tax Court who makes an election  
 8 under subsection (f) may deposit, for service performed  
 9 before such election for which contributions may be made  
 10 under this section, an amount equal to 1 percent of the  
 11 salary received for that service. Credit for any period cov-  
 12 ered by that service may not be allowed for purposes of  
 13 an annuity under this section until a deposit under this  
 14 subsection has been made for that period.

15 “(l) INDIVIDUAL RETIREMENT RECORDS.—The  
 16 amounts deducted and withheld under subsection (j), and  
 17 the amounts deposited under subsection (k), shall be cred-  
 18 ited to individual accounts in the name of each magistrate  
 19 judge of the Tax Court from whom such amounts are re-  
 20 ceived, for credit to the Tax Court Judicial Officers’ Re-  
 21 tirement Fund.

22 “(m) ANNUITIES AFFECTED IN CERTAIN CASES.—

23 “(1) 1-YEAR FORFEITURE FOR FAILURE TO  
 24 PERFORM JUDICIAL DUTIES.—Subject to paragraph  
 25 (3), any magistrate judge of the Tax Court who re-

1       tires under this section and who fails to perform ju-  
 2       dicial duties required of such individual by section  
 3       7443C shall forfeit all rights to an annuity under  
 4       this section for a 1-year period which begins on the  
 5       1st day on which such individual fails to perform  
 6       such duties.

7               “(2) PERMANENT FORFEITURE OF RETIRED  
 8       PAY WHERE CERTAIN NON-GOVERNMENT SERVICES  
 9       PERFORMED.—Subject to paragraph (3), any mag-  
 10      istrate judge of the Tax Court who retires under this  
 11      section and who thereafter performs (or supervises  
 12      or directs the performance of) legal or accounting  
 13      services in the field of Federal taxation for the indi-  
 14      vidual’s client, the individual’s employer, or any of  
 15      such employer’s clients, shall forfeit all rights to an  
 16      annuity under this section for all periods beginning  
 17      on or after the first day on which the individual per-  
 18      forms (or supervises or directs the performance of)  
 19      such services. The preceding sentence shall not apply  
 20      to any civil office or employment under the Govern-  
 21      ment of the United States.

22              “(3) FORFEITURES NOT TO APPLY WHERE IN-  
 23      DIVIDUAL ELECTS TO FREEZE AMOUNT OF ANNU-  
 24      ITY.—

1           “(A) IN GENERAL.—If a magistrate judge  
2 of the Tax Court makes an election under this  
3 paragraph—

4           “(i) paragraphs (1) and (2) (and sec-  
5 tion 7443C) shall not apply to such mag-  
6 istrate judge beginning on the date such  
7 election takes effect, and

8           “(ii) the annuity payable under this  
9 section to such magistrate judge, for peri-  
10 ods beginning on or after the date such  
11 election takes effect, shall be equal to the  
12 annuity to which such magistrate judge is  
13 entitled on the day before such effective  
14 date.

15           “(B) ELECTION REQUIREMENTS.—An elec-  
16 tion under subparagraph (A)—

17           “(i) may be made by a magistrate  
18 judge of the Tax Court eligible for retire-  
19 ment under this section, and

20           “(ii) shall be filed with the chief judge  
21 of the Tax Court.

22           Such an election, once it takes effect, shall be  
23 irrevocable.

24           “(C) EFFECTIVE DATE OF ELECTION.—  
25 Any election under subparagraph (A) shall take



1 effect on the first day of the first month fol-  
 2 lowing the month in which the election is made.

3 “(4) ACCEPTING OTHER EMPLOYMENT.—Any  
 4 magistrate judge of the Tax Court who retires under  
 5 this section and thereafter accepts compensation for  
 6 civil office or employment under the United States  
 7 Government (other than for the performance of  
 8 functions as a magistrate judge of the Tax Court  
 9 under section 7443C) shall forfeit all rights to an  
 10 annuity under this section for the period for which  
 11 such compensation is received. For purposes of this  
 12 paragraph, the term ‘compensation’ includes retired  
 13 pay or salary received in retired status.

14 “(n) LUMP-SUM PAYMENTS.—

15 “(1) ELIGIBILITY.—

16 “(A) IN GENERAL.—Subject to paragraph  
 17 (2), an individual who serves as a magistrate  
 18 judge of the Tax Court and—

19 “(i) who leaves office and is not re-  
 20 appointed as a magistrate judge of the Tax  
 21 Court for at least 31 consecutive days,

22 “(ii) who files an application with the  
 23 chief judge of the Tax Court for payment  
 24 of a lump-sum credit,

1                   “(iii) is not serving as a magistrate  
2                   judge of the Tax Court at the time of fil-  
3                   ing of the application, and

4                   “(iv) will not become eligible to re-  
5                   ceive an annuity under this section within  
6                   31 days after filing the application,  
7                   is entitled to be paid the lump-sum credit. Pay-  
8                   ment of the lump-sum credit voids all rights to  
9                   an annuity under this section based on the serv-  
10                  ice on which the lump-sum credit is based, until  
11                  that individual resumes office as a magistrate  
12                  judge of the Tax Court.

13                  “(B) PAYMENT TO SURVIVORS.—Lump-  
14                  sum benefits authorized by subparagraphs (C),  
15                  (D), and (E) of this paragraph shall be paid to  
16                  the person or persons surviving the magistrate  
17                  judge of the Tax Court and alive on the date  
18                  title to the payment arises, in the order of prec-  
19                  edence set forth in subsection (o) of section 376  
20                  of title 28, United States Code, and in accord-  
21                  ance with the last 2 sentences of paragraph (1)  
22                  of that subsection. For purposes of the pre-  
23                  ceding sentence, the term ‘judicial official’ as  
24                  used in subsection (o) of such section 376 shall  
25                  be deemed to mean ‘magistrate judge of the

1 Tax Court’ and the terms ‘Administrative Of-  
 2 fice of the United States Courts’ and ‘Director  
 3 of the Administrative Office of the United  
 4 States Courts’ shall be deemed to mean ‘chief  
 5 judge of the Tax Court’.

6 “(C) PAYMENT UPON DEATH OF JUDGE  
 7 BEFORE RECEIPT OF ANNUITY.—If a mag-  
 8 istrate judge of the Tax Court dies before re-  
 9 ceiving an annuity under this section, the lump-  
 10 sum credit shall be paid.

11 “(D) PAYMENT OF ANNUITY REMAIN-  
 12 DER.—If all annuity rights under this section  
 13 based on the service of a deceased magistrate  
 14 judge of the Tax Court terminate before the  
 15 total annuity paid equals the lump-sum credit,  
 16 the difference shall be paid.

17 “(E) PAYMENT UPON DEATH OF JUDGE  
 18 DURING RECEIPT OF ANNUITY.—If a magistrate  
 19 judge of the Tax Court who is receiving an an-  
 20 nuity under this section dies, any accrued annu-  
 21 ity benefits remaining unpaid shall be paid.

22 “(F) PAYMENT UPON TERMINATION.—Any  
 23 accrued annuity benefits remaining unpaid on  
 24 the termination, except by death, of the annuity

of a magistrate judge of the Tax Court shall be paid to that individual.

“(G) PAYMENT UPON ACCEPTING OTHER EMPLOYMENT.—Subject to paragraph (2), a magistrate judge of the Tax Court who forfeits rights to an annuity under subsection (m)(4) before the total annuity paid equals the lump-sum credit shall be entitled to be paid the difference if the magistrate judge of the Tax Court files an application with the chief judge of the Tax Court for payment of that difference. A payment under this subparagraph voids all rights to an annuity on which the payment is based.

“(2) SPOUSES AND FORMER SPOUSES.—

“(A) IN GENERAL.—Payment of the lump-sum credit under paragraph (1)(A) or a payment under paragraph (1)(G)—

“(i) may be made only if any current spouse and any former spouse of the magistrate judge of the Tax Court are notified of the magistrate judge’s application, and

“(ii) shall be subject to the terms of a court decree of divorce, annulment, or legal separation, or any court or court ap-

proved property settlement agreement incident to such decree, if—

“(I) the decree, order, or agreement expressly relates to any portion of the lump-sum credit or other payment involved, and

“(II) payment of the lump-sum credit or other payment would extinguish entitlement of the magistrate judge’s spouse or former spouse to any portion of an annuity under subsection (i).

“(B) NOTIFICATION.—Notification of a spouse or former spouse under this paragraph shall be made in accordance with such procedures as the chief judge of the Tax Court shall prescribe. The chief judge may provide under such procedures that subparagraph (A)(i) may be waived with respect to a spouse or former spouse if the magistrate judge establishes to the satisfaction of the chief judge that the whereabouts of such spouse or former spouse cannot be determined.

“(C) RESOLUTION OF 2 OR MORE ORDERS.—The chief judge shall prescribe proce-

1           dures under which this paragraph shall be ap-  
 2           plied in any case in which the chief judge re-  
 3           ceives 2 or more orders or decrees described in  
 4           subparagraph (A).

5           “(3) DEFINITION.—For purposes of this sub-  
 6           section, the term ‘lump-sum credit’ means the  
 7           unrefunded amount consisting of—

8                   “(A) retirement deductions made under  
 9                   this section from the salary of a magistrate  
 10                  judge of the Tax Court,

11                   “(B) amounts deposited under subsection  
 12                   (k) by a magistrate judge of the Tax Court cov-  
 13                   ering earlier service, and

14                   “(C) interest on the deductions and depos-  
 15                   its which, for any calendar year, shall be equal  
 16                   to the overall average yield to the Tax Court  
 17                   Judicial Officers’ Retirement Fund during the  
 18                   preceding fiscal year from all obligations pur-  
 19                   chased by the Secretary during such fiscal year  
 20                   under subsection (o); but does not include  
 21                   interest—

22                           “(i) if the service covered thereby ag-  
 23                           gregates 1 year or less, or

24                           “(ii) for the fractional part of a  
 25                           month in the total service.

1       “(o) TAX COURT JUDICIAL OFFICERS’ RETIREMENT  
2 FUND.—

3               “(1) ESTABLISHMENT.—There is established in  
4 the Treasury a fund which shall be known as the  
5 ‘Tax Court Judicial Officers’ Retirement Fund’.  
6 Amounts in the Fund are authorized to be appro-  
7 priated for the payment of annuities, refunds, and  
8 other payments under this section.

9               “(2) INVESTMENT OF FUND.—The Secretary  
10 shall invest, in interest bearing securities of the  
11 United States, such currently available portions of  
12 the Tax Court Judicial Officers’ Retirement Fund as  
13 are not immediately required for payments from the  
14 Fund. The income derived from these investments  
15 constitutes a part of the Fund.

16               “(3) UNFUNDED LIABILITY.—

17                       “(A) IN GENERAL.—There are authorized  
18 to be appropriated to the Tax Court Judicial  
19 Officers’ Retirement Fund amounts required to  
20 reduce to zero the unfunded liability of the  
21 Fund.

22                       “(B) UNFUNDED LIABILITY.—For pur-  
23 poses of subparagraph (A), the term ‘unfunded  
24 liability’ means the estimated excess, deter-  
25 mined on an annual basis in accordance with

the provisions of section 9503 of title 31, United States Code, of the present value of all benefits payable from the Tax Court Judicial Officers' Retirement Fund over the sum of—

“(i) the present value of deductions to be withheld under this section from the future basic pay of magistrate judges of the Tax Court, plus

“(ii) the balance in the Fund as of the date the unfunded liability is determined.

“(p) PARTICIPATION IN THRIFT SAVINGS PLAN.—

“(1) ELECTION TO CONTRIBUTE.—

“(A) IN GENERAL.—A magistrate judge of the Tax Court who elects to receive an annuity under this section or under section 611 of the Pension Security and Transparency Act of 2005 may elect to contribute an amount of such individual's basic pay to the Thrift Savings Fund established by section 8437 of title 5, United States Code.

“(B) PERIOD OF ELECTION.—An election may be made under this paragraph only during a period provided under section 8432(b) of title 5, United States Code, for individuals subject to chapter 84 of such title.



1 “(2) APPLICABILITY OF TITLE 5 PROVISIONS.—

2 Except as otherwise provided in this subsection, the  
3 provisions of subchapters III and VII of chapter 84  
4 of title 5, United States Code, shall apply with re-  
5 spect to a magistrate judge who makes an election  
6 under paragraph (1).

7 “(3) SPECIAL RULES.—

8 “(A) AMOUNT CONTRIBUTED.—The  
9 amount contributed by a magistrate judge to  
10 the Thrift Savings Fund in any pay period shall  
11 not exceed the maximum percentage of such  
12 judge’s basic pay for such pay period as allow-  
13 able under section 8440f of title 5, United  
14 States Code.

15 “(B) CONTRIBUTIONS FOR BENEFIT OF  
16 JUDGE.—No contributions may be made for the  
17 benefit of a magistrate judge under section  
18 8432(c) of title 5, United States Code.

19 “(C) APPLICABILITY OF SECTION 8433(b)  
20 OF TITLE 5.—Section 8433(b) of title 5, United  
21 States Code, applies with respect to a mag-  
22 istrate judge who makes an election under para-  
23 graph (1) and—

24 “(i) who retires entitled to an imme-  
25 diate annuity under this section (including

1 a disability annuity under subsection (d) of  
 2 this section) or section 611 of the Pension  
 3 Security and Transparency Act of 2005,

4 “(ii) who retires before attaining age  
 5 65 but is entitled, upon attaining age 65,  
 6 to an annuity under this section or section  
 7 611 of the Pension Security and Trans-  
 8 parency Act of 2005, or

9 “(iii) who retires before becoming en-  
 10 titled to an immediate annuity, or an an-  
 11 nuity upon attaining age 65, under this  
 12 section or section 611 of the Pension Secu-  
 13 rity and Transparency Act of 2005.

14 “(D) SEPARATION FROM SERVICE.—With  
 15 respect to a magistrate judge to whom this sub-  
 16 section applies, retirement under this section or  
 17 section 611 of the Pension Security and Trans-  
 18 parency Act of 2005 is a separation from serv-  
 19 ice for purposes of subchapters III and VII of  
 20 chapter 84 of title 5, United States Code.

21 “(4) DEFINITIONS.—For purposes of this sub-  
 22 section, the terms ‘retirement’ and ‘retire’ include  
 23 removal from office under section 7443A(a)(2) on  
 24 the sole ground of mental or physical disability.

1           “(5) OFFSET.—In the case of a magistrate  
 2       judge who receives a distribution from the Thrift  
 3       Savings Fund and who later receives an annuity  
 4       under this section, that annuity shall be offset by an  
 5       amount equal to the amount which represents the  
 6       Government’s contribution to that person’s Thrift  
 7       Savings Account, without regard to earnings attrib-  
 8       utable to that amount. Where such an offset would  
 9       exceed 50 percent of the annuity to be received in  
 10      the first year, the offset may be divided equally over  
 11      the first 2 years in which that person receives the  
 12      annuity.

13           “(6) EXCEPTION.—Notwithstanding clauses (i)  
 14      and (ii) of paragraph (3)(C), if any magistrate judge  
 15      retires under circumstances making such magistrate  
 16      judge eligible to make an election under subsection  
 17      (b) of section 8433 of title 5, United States Code,  
 18      and such magistrate judge’s nonforfeitable account  
 19      balance is less than an amount that the Executive  
 20      Director of the Office of Personnel Management pre-  
 21      scribes by regulation, the Executive Director shall  
 22      pay the nonforfeitable account balance to the partici-  
 23      pant in a single payment.”.

24           (b) CONFORMING AMENDMENT.—The table of sec-  
 25      tions for part I of subchapter C of chapter 76 is amended

1 by inserting after the item relating to section 7443A the  
 2 following new item:

“Sec. 7443B. Retirement for magistrate judges of the Tax Court.”.

3 **SEC. 1211. INCUMBENT MAGISTRATE JUDGES OF THE TAX**  
 4 **COURT.**

5 (a) RETIREMENT ANNUITY UNDER TITLE 5 AND  
 6 SECTION 7443B OF THE INTERNAL REVENUE CODE OF  
 7 1986.—A magistrate judge of the United States Tax  
 8 Court in active service on the date of the enactment of  
 9 this Act shall, subject to subsection (b), be entitled, in lieu  
 10 of the annuity otherwise provided under the amendments  
 11 made by this title, to—

12 (1) an annuity under subchapter III of chapter  
 13 83, or under chapter 84 (except for subchapters III  
 14 and VII), of title 5, United States Code, as the case  
 15 may be, for creditable service before the date on  
 16 which service would begin to be credited for pur-  
 17 poses of paragraph (2), and

18 (2) an annuity calculated under subsection (b)  
 19 or (c) and subsection (g) of section 7443B of the In-  
 20 ternal Revenue Code of 1986, as added by this Act,  
 21 for any service as a magistrate judge of the United  
 22 States Tax Court or special trial judge of the United  
 23 States Tax Court but only with respect to service as  
 24 such a magistrate judge or special trial judge after  
 25 a date not earlier than 9½ years prior to the date

1 of the enactment of this Act (as specified in the elec-  
 2 tion pursuant to subsection (b)) for which deduc-  
 3 tions and deposits are made under subsections (j)  
 4 and (k) of such section 7443B, as applicable, with-  
 5 out regard to the minimum number of years of serv-  
 6 ice as such a magistrate judge of the United States  
 7 Tax Court, except that—

8 (A) in the case of a magistrate judge who  
 9 retired with less than 8 years of service, the an-  
 10 nuity under subsection (c) of such section  
 11 7443B shall be equal to that proportion of the  
 12 salary being received at the time the magistrate  
 13 judge leaves office which the years of service  
 14 bears to 14, subject to a reduction in accord-  
 15 ance with subsection (c) of such section 7443B  
 16 if the magistrate judge is under age 65 at the  
 17 time he or she leaves office, and

18 (B) the aggregate amount of the annuity  
 19 initially payable on retirement under this sub-  
 20 section may not exceed the rate of pay for the  
 21 magistrate judge which is in effect on the day  
 22 before the retirement becomes effective.

23 (b) FILING OF NOTICE OF ELECTION.—A magistrate  
 24 judge of the United States Tax Court shall be entitled to  
 25 an annuity under this section only if the magistrate judge

1 files a notice of that election with the chief judge of the  
2 United States Tax Court specifying the date on which  
3 service would begin to be credited under section 7443B  
4 of the Internal Revenue Code of 1986, as added by this  
5 Act, in lieu of chapter 83 or chapter 84 of title 5, United  
6 States Code. Such notice shall be filed in accordance with  
7 such procedures as the chief judge of the United States  
8 Tax Court shall prescribe.

9 (c) LUMP-SUM CREDIT UNDER TITLE 5.—A mag-  
10 istrate judge of the United States Tax Court who makes  
11 an election under subsection (b) shall be entitled to a  
12 lump-sum credit under section 8342 or 8424 of title 5,  
13 United States Code, as the case may be, for any service  
14 which is covered under section 7443B of the Internal Rev-  
15 enue Code of 1986, as added by this Act, pursuant to that  
16 election, and with respect to which any contributions were  
17 made by the magistrate judge under the applicable provi-  
18 sions of title 5, United States Code.

19 (d) RECALL.—With respect to any magistrate judge  
20 of the United States Tax Court receiving an annuity under  
21 this section who is recalled to serve under section 7443C  
22 of the Internal Revenue Code of 1986, as added by this  
23 Act—

24 (1) the amount of compensation which such re-  
25 called magistrate judge receives under such section

7 Section 7443B(m)(4) of the Internal Revenue Code of  
8 1986, as added by this Act, shall not apply with respect  
9 to service as a reemployed annuitant described in para-  
10 graph (2).

(a) IN GENERAL.—Part I of subchapter C of chapter 76, as amended by this Act, is amended by inserting after section 7443B the following new section:

“(a) RECALLING OF RETIRED MAGISTRATE  
JUDGES.—Any individual who has retired pursuant to sec-  
tion 7443B or the applicable provisions of title 5, United  
States Code, upon reaching the age and service require-  
ments established therein, may at or after retirement be  
called upon by the chief judge of the Tax Court to perform  
such judicial duties with the Tax Court as may be re-  
quested of such individual for any period or periods speci-

1 fied by the chief judge; except that in the case of any such  
2 individual—

3 “(1) the aggregate of such periods in any 1 cal-  
4 endar year shall not (without such individual’s con-  
5 sent) exceed 90 calendar days, and

6 “(2) such individual shall be relieved of per-  
7 forming such duties during any period in which ill-  
8 ness or disability precludes the performance of such  
9 duties.

10 Any act, or failure to act, by an individual performing ju-  
11 dicial duties pursuant to this subsection shall have the  
12 same force and effect as if it were the act (or failure to  
13 act) of a magistrate judge of the Tax Court.

14 “(b) COMPENSATION.—For the year in which a pe-  
15 riod of recall occurs, the magistrate judge shall receive,  
16 in addition to the annuity provided under the provisions  
17 of section 7443B or under the applicable provisions of title  
18 5, United States Code, an amount equal to the difference  
19 between that annuity and the current salary of the office  
20 to which the magistrate judge is recalled. The annuity of  
21 the magistrate judge who completes that period of service,  
22 who is not recalled in a subsequent year, and who retired  
23 under section 7443B, shall be equal to the salary in effect  
24 at the end of the year in which the period of recall oc-  
25 curred for the office from which such individual retired.



1 “(c) RULEMAKING AUTHORITY.—The provisions of  
 2 this section may be implemented under such rules as may  
 3 be promulgated by the Tax Court.”

4 (b) CONFORMING AMENDMENT.—The table of sec-  
 5 tions for part I of subchapter C of chapter 76, as amended  
 6 by this Act, is amended by inserting after the item relating  
 7 to section 7443B the following new item:

“Sec. 7443C. Recall of magistrate judges of the Tax Court.”.

8 **SEC. 1213. EFFECTIVE DATE.**

9 Except as otherwise provided, the amendments made  
 10 by this subtitle shall take effect on the date of the enact-  
 11 ment of this Act.

12 **TITLE XIII—OTHER PROVISIONS**  
 13 **Subtitle A—Administrative**  
 14 **Provision**

15 **SEC. 1301. PROVISIONS RELATING TO PLAN AMENDMENTS.**

16 (a) IN GENERAL.—If this section applies to any plan  
 17 or contract amendment—

18 (1) such plan or contract shall be treated as  
 19 being operated in accordance with the terms of the  
 20 plan during the period described in subsection

21 (b)(2)(A), and

22 (2) except as provided by the Secretary of the  
 23 Treasury, such plan shall not fail to meet the re-  
 24 quirements of section 411(d)(6) of the Internal Rev-  
 25 enue Code of 1986 and section 204(g) of the Em-

1        ployee Retirement Income Security Act of 1974 by  
2        reason of such amendment.

3        (b) AMENDMENTS TO WHICH SECTION APPLIES.—

4            (1) IN GENERAL.—This section shall apply to  
5        any amendment to any plan or annuity contract  
6        which is made—

7            (A) pursuant to any amendment made by  
8        this Act or the Economic Growth and Tax Re-  
9        lief Reconciliation Act of 2001, or pursuant to  
10       any regulation issued by the Secretary of the  
11       Treasury or the Secretary of Labor under such  
12       Acts, and

13          (B) on or before the last day of the first  
14       plan year beginning on or after January 1,  
15       2007, or such later date as the Secretary of the  
16       Treasury may prescribe.

17       In the case of a governmental plan (as defined in  
18       section 414(d) of the Internal Revenue Code of  
19       1986), subparagraph (B) shall be applied by sub-  
20       stituting the date which is 2 years after the date  
21       otherwise applied under subparagraph (B).

22          (2) CONDITIONS.—This section shall not apply  
23       to any amendment unless—

24            (A) during the period—

1 (i) beginning on the date the legisla-  
 2 tive or regulatory amendment described in  
 3 paragraph (1)(A) takes effect (or in the  
 4 case of a plan or contract amendment not  
 5 required by such legislative or regulatory  
 6 amendment, the effective date specified by  
 7 the plan), and

8 (ii) ending on the date described in  
 9 paragraph (1)(B) (or, if earlier, the date  
 10 the plan or contract amendment is adopt-  
 11 ed),

12 the plan or contract is operated as if such plan  
 13 or contract amendment were in effect; and

14 (B) such plan or contract amendment ap-  
 15 plies retroactively for such period.

16 **SEC. 1302. AUTHORITY TO THE SECRETARY OF LABOR, SEC-**  
 17 **RETARY OF THE TREASURY, AND THE PEN-**  
 18 **SION BENEFIT GUARANTY CORPORATION TO**  
 19 **POSTPONE CERTAIN DEADLINES.**

20 The Secretary of Labor, the Secretary of the Treas-  
 21 ury, and the Executive Director of the Pension Benefit  
 22 Guaranty Corporation shall exercise their authority under  
 23 section 518 of the Employee Retirement Income Security  
 24 Act of 1974 (29 U.S.C. 1148) and section 7508A of the  
 25 Internal Revenue Code of 1986 to postpone certain dead-

1 lines by reason of the Presidentially declared disaster  
 2 areas in Louisiana, Mississippi, Alabama, Texas, Florida,  
 3 or elsewhere, due to the effect of Hurricane Katrina, Rita,  
 4 or Wilma. The Secretaries and the Executive Director of  
 5 the Corporation shall issue guidance as soon as is prac-  
 6 ticable to plan sponsors and participants regarding exten-  
 7 sion of deadlines and rules applicable to these extraor-  
 8 dinary circumstances. Nothing in this section shall be con-  
 9 strued to relieve any plan sponsor from any requirement  
 10 to pay benefits or make contributions under the plan of  
 11 the sponsor.

## 12 **Subtitle B—Governmental Pension** 13 **Plan Equalization**

### 14 **SEC. 1311. DEFINITION OF GOVERNMENTAL PLAN.**

15 (a) AMENDMENT TO INTERNAL REVENUE CODE OF  
 16 1986.—Section 414(d) of the Internal Revenue Code of  
 17 1986 (definition of governmental plan) is amended by add-  
 18 ing at the end the following: “The term ‘governmental  
 19 plan’ includes a plan established or maintained for its em-  
 20 ployees by an Indian tribal government (as defined in sec-  
 21 tion 7701(a)(40)), a subdivision of an Indian tribal gov-  
 22 ernment (determined in accordance with section 7871(d)),  
 23 an agency instrumentality (or subdivision) of an Indian  
 24 tribal government, or an entity established under Federal,

1 State, or tribal law which is wholly owned or controlled  
2 by any of the foregoing.”.

3 (b) AMENDMENT TO EMPLOYEE RETIREMENT IN-  
4 COME SECURITY ACT OF 1974.—Section 3(32) of the Em-  
5 ployee Retirement Income Security Act of 1974 (29  
6 U.S.C. 1002(32)) is amended by adding at the end the  
7 following: “The term ‘governmental plan’ includes a plan  
8 established or maintained for its employees by an Indian  
9 tribal government (as defined in section 7701(a)(40)), a  
10 subdivision of an Indian tribal government (determined in  
11 accordance with section 7871(d)), an agency instrumen-  
12 tality (or subdivision) of an Indian tribal government, or  
13 an entity established under Federal, State, or tribal law  
14 that is wholly owned or controlled by any of the fore-  
15 going.”.

16 **SEC. 1312. EXTENSION TO ALL GOVERNMENTAL PLANS OF**  
17 **CURRENT MORATORIUM ON APPLICATION OF**  
18 **CERTAIN NONDISCRIMINATION RULES APPLI-**  
19 **CABLE TO STATE AND LOCAL PLANS.**

20 (a) IN GENERAL.—

21 (1) Subparagraph (G) of section 401(a)(5) and  
22 subparagraph (G) of section 401(a)(26) of the Inter-  
23 nal Revenue Code of 1986 are each amended by  
24 striking “section 414(d))” and all that follows and  
25 inserting “section 414(d)).”.

1           (2) Subparagraph (G) of section 401(k)(3) of  
2       such Code and paragraph (2) of section 1505(d) of  
3       the Taxpayer Relief Act of 1997 (Public Law 105–  
4       34; 111 Stat. 1063) are each amended by striking  
5       “maintained by a State or local government or polit-  
6       ical subdivision thereof (or agency or instrumentality  
7       thereof)”.

8       (b) CONFORMING AMENDMENTS.—

9           (1) The heading of subparagraph (G) of section  
10       401(a)(5) of the Internal Revenue Code of 1986 is  
11       amended by striking “STATE AND LOCAL GOVERN-  
12       MENTAL” and inserting “GOVERNMENTAL”.

13          (2) The heading of subparagraph (G) of section  
14       401(a)(26) of such Code is amended by striking  
15       “EXCEPTION FOR STATE AND LOCAL” and inserting  
16       “EXCEPTION FOR”.

17          (3) Section 401(k)(3)(G) of such Code is  
18       amended by inserting “GOVERNMENTAL PLAN.—”  
19       after “(G)”.

1 **SEC. 1313. CLARIFICATION THAT TRIBAL GOVERNMENTS**  
 2 **ARE SUBJECT TO THE SAME DEFINED BEN-**  
 3 **EFIT PLAN RULES AND REGULATIONS AP-**  
 4 **PLIED TO STATE AND OTHER LOCAL GOV-**  
 5 **ERNMENTS, THEIR POLICE AND FIRE-**  
 6 **FIGHTERS.**

7 (a) AMENDMENTS TO INTERNAL REVENUE CODE OF  
 8 1986.—

9 (1) POLICE AND FIREFIGHTERS.—Subpara-  
 10 graph (H) section 415(b)(2) of the Internal Revenue  
 11 Code of 1986 (defining participant) is amended—

12 (A) in clause (i), by striking “State or po-  
 13 litical subdivision” and inserting “State, Indian  
 14 tribal government (as defined in section  
 15 7701(a)(40)), or any political subdivision”; and

16 (B) in clause (ii)(I), by striking “State or  
 17 political subdivision” each place it appears and  
 18 inserting “State, Indian tribal government (as  
 19 so defined), or any political subdivision”.

20 (2) STATE AND LOCAL GOVERNMENT PLANS.—

21 (A) IN GENERAL.—Subparagraph (A) of  
 22 section 415(b)(10) of such Code (relating to  
 23 limitation to equal accrued benefit) is  
 24 amended—

1 (i) by inserting “, Indian tribal gov-  
 2 ernment (as defined in section  
 3 7701(a)(40)),” after “State”;

4 (ii) by inserting “any” before “polit-  
 5 ical subdivision”; and

6 (iii) by inserting “any of” before “the  
 7 foregoing”.

8 (B) CONFORMING AMENDMENT.—The  
 9 heading of paragraph (1) of section 415(b) of  
 10 such Code is amended by striking “SPECIAL  
 11 RULE FOR STATE AND” and inserting “SPECIAL  
 12 RULE FOR STATE, INDIAN TRIBAL, AND”.

13 (3) GOVERNMENT PICK UP CONTRIBUTIONS.—  
 14 Paragraph (2) of section 414(h) of such Code (relat-  
 15 ing to designation by units of government) is amend-  
 16 ed by striking “State or political subdivision” and  
 17 inserting “State, Indian tribal government (as de-  
 18 fined in section 7701(a)(40)), or any political sub-  
 19 division”.

20 (b) AMENDMENTS TO EMPLOYEE RETIREMENT IN-  
 21 COME SECURITY ACT OF 1974.—Section 4021(b) of the  
 22 Employee Retirement Income Security Act of 1974 (29  
 23 U.S.C. 1321(b)) is amended—

24 (1) in paragraph (12), by striking “or” at the  
 25 end;



1 (2) in paragraph (13), by striking “plan.” and  
 2 inserting “plan; or”; and

3 (3) by adding at the end the following:

4 “(14) established and maintained for its em-  
 5 ployees by an Indian tribal government (as defined  
 6 in section 7701(a)(40) of the Internal Revenue Code  
 7 of 1986), a subdivision of an Indian tribal govern-  
 8 ment (determined in accordance with section  
 9 7871(d) of such Code), an agency or instrumentality  
 10 of an Indian tribal government or subdivision there-  
 11 of, or an entity established under Federal, State, or  
 12 tribal law that is wholly owned or controlled by any  
 13 of the foregoing.”.

14 **SEC. 1314. EFFECTIVE DATE.**

15 The amendments made by this subtitle shall apply to  
 16 any year beginning before, on, or after the date of the  
 17 enactment of this Act.

18 **Subtitle C—Miscellaneous**  
 19 **Provisions**

20 **SEC. 1321. TRANSFER OF EXCESS FUNDS FROM BLACK**  
 21 **LUNG DISABILITY TRUSTS TO UNITED MINE**  
 22 **WORKERS OF AMERICA COMBINED BENEFIT**  
 23 **FUND.**

24 (a) IN GENERAL.—So much of section 501(c)(21)(C)  
 25 of the Internal Revenue Code of 1986 (relating to black

1 lung disability trusts) as precedes the last sentence is  
 2 amended to read as follows:

3           “(C) Payments described in subparagraph  
 4           (A)(i)(IV) may be made from such trust during  
 5           a taxable year only to the extent that the aggre-  
 6           gate amount of such payments during such tax-  
 7           able year does not exceed the excess (if any), as  
 8           of the close of the preceding taxable year, of—

9                   “(i) the fair market value of the as-  
 10                 sets of the trust, over

11                   “(ii) 110 percent of the present value  
 12                 of the liability described in subparagraph  
 13                 (A)(i)(I) of such person.”

14         (b) TRANSFER.—Section 9705 of such Code (relating  
 15 to transfer) is amended by adding at the end the following  
 16 new subsection:

17         “(c) TRANSFER FROM BLACK LUNG DISABILITY  
 18 TRUSTS.—

19           “(1) IN GENERAL.—The Secretary shall trans-  
 20         fer each fiscal year to the Fund from the general  
 21         fund of the Treasury an amount which the Secretary  
 22         estimates to be the additional amounts received in  
 23         the Treasury for that fiscal year by reason of the  
 24         amendment made by section 1321(a) of the Pension  
 25         Security and Transparency Act of 2005. The Sec-

1       retary shall adjust the amount transferred for any  
 2       year to the extent necessary to correct errors in any  
 3       estimate for any prior year.

4           “(2) USE OF FUNDS.—Any amount transferred  
 5       to the Combined Fund under paragraph (1) shall be  
 6       used to proportionately reduce the unassigned bene-  
 7       ficiary premium under section 9704(a)(3) of each  
 8       assigned operator for any plan year beginning after  
 9       December 31, 2002.”.

10       (c) EFFECTIVE DATE.—The amendments made by  
 11       this section shall apply to taxable years beginning after  
 12       December 31, 2002.

13       **SEC. 1322. TREATMENT OF DEATH BENEFITS FROM COR-**  
 14           **PORATE-OWNED LIFE INSURANCE.**

15       (a) IN GENERAL.—Section 101 of the Internal Rev-  
 16       enue Code of 1986 (relating to certain death benefits) is  
 17       amended by adding at the end the following new sub-  
 18       section:

19           “(j) TREATMENT OF CERTAIN EMPLOYER-OWNED  
 20       LIFE INSURANCE CONTRACTS.—

21           “(1) GENERAL RULE.—In the case of an em-  
 22       ployer-owned life insurance contract, the amount ex-  
 23       cluded from gross income of an applicable policy-  
 24       holder by reason of paragraph (1) of subsection (a)  
 25       shall not exceed an amount equal to the sum of the

1 premiums and other amounts paid by the policy-  
 2 holder for the contract.

3 “(2) EXCEPTIONS.—In the case of an employer-  
 4 owned life insurance contract with respect to which  
 5 the notice and consent requirements of paragraph  
 6 (4) are met, paragraph (1) shall not apply to any of  
 7 the following:

8 “(A) EXCEPTIONS BASED ON INSURED’S  
 9 STATUS.—Any amount received by reason of  
 10 the death of an insured who, with respect to an  
 11 applicable policyholder—

12 “(i) was an employee at any time dur-  
 13 ing the 12-month period before the in-  
 14 sured’s death, or

15 “(ii) is, at the time the contract is  
 16 issued—

17 “(I) a director,

18 “(II) a highly compensated em-  
 19 ployee within the meaning of section  
 20 414(q) (without regard to paragraph  
 21 (1)(B)(ii) thereof), or

22 “(III) a highly compensated indi-  
 23 vidual within the meaning of section  
 24 105(h)(5), except that ‘35 percent’

1 shall be substituted for ‘25 percent’ in  
 2 subparagraph (C) thereof.

3 “(B) EXCEPTION FOR AMOUNTS PAID TO  
 4 INSURED’S HEIRS.—Any amount received by  
 5 reason of the death of an insured to the  
 6 extent—

7 “(i) the amount is paid to a member  
 8 of the family (within the meaning of sec-  
 9 tion 267(c)(4)) of the insured, any indi-  
 10 vidual who is the designated beneficiary of  
 11 the insured under the contract (other than  
 12 the applicable policyholder), a trust estab-  
 13 lished for the benefit of any such member  
 14 of the family or designated beneficiary, or  
 15 the estate of the insured, or

16 “(ii) the amount is used to purchase  
 17 an equity (or capital or profits) interest in  
 18 the applicable policyholder from any person  
 19 described in clause (i).

20 “(3) EMPLOYER-OWNED LIFE INSURANCE CON-  
 21 TRACT.—

22 “(A) IN GENERAL.—For purposes of this  
 23 subsection, the term ‘employer-owned life insur-  
 24 ance contract’ means a life insurance contract  
 25 which—

“(i) is owned by a person engaged in a trade or business and under which such person (or a related person described in subparagraph (B)(ii)) is directly or indirectly a beneficiary under the contract, and

“(ii) covers the life of an insured who is an employee with respect to the trade or business of the applicable policyholder on the date the contract is issued.

For purposes of the preceding sentence, if coverage for each insured under a master contract is treated as a separate contract for purposes of sections 817(h), 7702, and 7702A, coverage for each such insured shall be treated as a separate contract.

“(B) APPLICABLE POLICYHOLDER.—For purposes of this subsection—

“(i) IN GENERAL.—The term ‘applicable policyholder’ means, with respect to any employer-owned life insurance contract, the person described in subparagraph (A)(i) which owns the contract.

“(ii) RELATED PERSONS.—The term ‘applicable policyholder’ includes any person which—

1                   “(I) bears a relationship to the  
2                   person described in clause (i) which is  
3                   specified in section 267(b) or  
4                   707(b)(1), or

5                   “(II) is engaged in trades or  
6                   businesses with such person which are  
7                   under common control (within the  
8                   meaning of subsection (a) or (b) of  
9                   section 52).

10               “(4) NOTICE AND CONSENT REQUIREMENTS.—

11               The notice and consent requirements of this para-  
12               graph are met if, before the issuance of the contract,  
13               the employee—

14                   “(A) is notified in writing that the applica-  
15                   ble policyholder intends to insure the employee’s  
16                   life and the maximum face amount for which  
17                   the employee could be insured at the time the  
18                   contract was issued,

19                   “(B) provides written consent to being in-  
20                   sured under the contract and that such cov-  
21                   erage may continue after the insured terminates  
22                   employment, and

23                   “(C) is informed in writing that an appli-  
24                   cable policyholder will be a beneficiary of any

1           proceeds payable upon the death of the em-  
2           ployee.

3           “(5) DEFINITIONS.—For purposes of this  
4           subsection—

5                   “(A) EMPLOYEE.—The term ‘employee’ in-  
6           cludes an officer, director, and highly com-  
7           pensated employee (within the meaning of sec-  
8           tion 414(q)).

9                   “(B) INSURED.—The term ‘insured’  
10          means, with respect to an employer-owned life  
11          insurance contract, an individual covered by the  
12          contract who is a United States citizen or resi-  
13          dent. In the case of a contract covering the  
14          joint lives of 2 individuals, references to an in-  
15          sured include both of the individuals.”.

16          (b) REPORTING REQUIREMENTS.—Subpart A of part  
17          III of subchapter A of chapter 61 of the Internal Revenue  
18          Code of 1986 (relating to information concerning persons  
19          subject to special provisions) is amended by inserting after  
20          section 6039H the following new section:

21          **“SEC. 6039I. RETURNS AND RECORDS WITH RESPECT TO**  
22                   **EMPLOYER-OWNED LIFE INSURANCE CON-**  
23                   **TRACTS.**

24                   “(a) IN GENERAL.—Every applicable policyholder  
25          owning 1 or more employer-owned life insurance contracts



1 issued after the date of the enactment of this section shall  
2 file a return (at such time and in such manner as the  
3 Secretary shall by regulations prescribe) showing for each  
4 year such contracts are owned—

5 “(1) the number of employees of the applicable  
6 policyholder at the end of the year,

7 “(2) the number of such employees insured  
8 under such contracts at the end of the year,

9 “(3) the total amount of insurance in force at  
10 the end of the year under such contracts,

11 “(4) the name, address, and taxpayer identifica-  
12 tion number of the applicable policyholder and the  
13 type of business in which the policyholder is en-  
14 gaged, and

15 “(5) that the applicable policyholder has a valid  
16 consent for each insured employee (or, if all such  
17 consents are not obtained, the number of insured  
18 employees for whom such consent was not obtained).

19 “(b) RECORDKEEPING REQUIREMENT.—Each appli-  
20 cable policyholder owning 1 or more employer-owned life  
21 insurance contracts during any year shall keep such  
22 records as may be necessary for purposes of determining  
23 whether the requirements of this section and section  
24 101(j) are met.

1       “(c) DEFINITIONS.—Any term used in this section  
2 which is used in section 101(j) shall have the same mean-  
3 ing given such term by section 101(j).”.

4       (c) CONFORMING AMENDMENTS.—

5           (1) Paragraph (1) of section 101(a) of the In-  
6 ternal Revenue Code of 1986 is amended by striking  
7 “and subsection (f)” and inserting “subsection (f),  
8 and subsection (j)”.

9           (2) The table of sections for subpart A of part  
10 III of subchapter A of chapter 61 of such Code is  
11 amended by inserting after the item relating to sec-  
12 tion 6039H the following new item:

“Sec. 6039I. Returns and records with respect to employer-owned life insurance  
contracts.”.

13       (d) EFFECTIVE DATE.—The amendments made by  
14 this section shall apply to life insurance contracts issued  
15 after the date of the enactment of this Act, except for a  
16 contract issued after such date pursuant to an exchange  
17 described in section 1035 of the Internal Revenue Code  
18 of 1986 for a contract issued on or prior to that date.  
19 For purposes of the preceding sentence, any material in-  
20 crease in the death benefit or other material change shall  
21 cause the contract to be treated as a new contract except  
22 that, in the case of a master contract (within the meaning  
23 of section 264(f)(4)(E) of such Code), the addition of cov-

1 ered lives shall be treated as a new contract only with re-  
 2 spect to such additional covered lives.

## 3 **Subtitle D—Other Related Pension** 4 **Provisions**

### 5 **PART I—HEALTH AND MEDICAL BENEFITS**

#### 6 **SEC. 1331. USE OF EXCESS PENSION ASSETS FOR FUTURE** 7 **RETIREE HEALTH BENEFITS.**

8 (a) IN GENERAL.—Section 420 of the Internal Rev-  
 9 enue Code of 1986 (relating to transfers of excess pension  
 10 assets to retiree health accounts), as amended by this Act,  
 11 is amended by adding at the end the following new sub-  
 12 section:

13 “(f) QUALIFIED TRANSFER TO COVER FUTURE RE-  
 14 TIREE HEALTH COSTS.—

15 “(1) IN GENERAL.—An employer maintaining a  
 16 defined benefit plan (other than a multiemployer  
 17 plan) may elect for any taxable year to have the plan  
 18 make a qualified future transfer rather than a quali-  
 19 fied transfer for the taxable year. Except as pro-  
 20 vided in this subsection, a qualified future transfer  
 21 shall be treated for purposes of this title and the  
 22 Employee Retirement Income Security Act of 1974  
 23 as if it were a qualified transfer.

24 “(2) QUALIFIED FUTURE TRANSFER.—For pur-  
 25 poses of this subsection—

“(A) IN GENERAL.—The term ‘qualified future transfer’ means a transfer which meets all of the requirements for a qualified transfer, except that—

“(i) the determination of excess pension assets shall be made under subparagraph (B),

“(ii) the limitation on the amount transferred shall be made under subparagraph (C), and

“(iii) the minimum cost requirements of subsection (c)(3) shall be modified as provided under subparagraph (D).

“(B) EXCESS PENSION ASSETS.—

“(i) IN GENERAL.—In determining excess pension assets for purposes of this subsection, subsection (e)(2) shall be applied by substituting ‘115 percent’ for ‘125 percent’.

“(ii) REQUIREMENT TO MAINTAIN FUNDED STATUS.—If, as of any valuation date of any plan year in the transfer period, the amount determined under subsection (e)(2)(B) (after application of

1 clause (i)) exceeds the amount determined  
 2 under subsection (e)(2)(A), either—

3 “(I) the employer maintaining  
 4 the plan shall make contributions to  
 5 the plan in an amount not less than  
 6 the amount required to reduce such  
 7 excess to zero as of such date, or

8 “(II) there is transferred from  
 9 the health benefits account to the plan  
 10 an amount not less than the amount  
 11 required to reduce such excess to zero  
 12 as of such date.

13 “(C) LIMITATION ON AMOUNT TRANS-  
 14 FERRED.—Notwithstanding subsection (b)(3),  
 15 the amount of the excess pension assets which  
 16 may be transferred in a qualified future trans-  
 17 fer shall be equal to the sum of—

18 “(i) if the transfer period includes the  
 19 taxable year of the transfer, the amount  
 20 determined under subsection (b)(3) for  
 21 such taxable year, plus

22 “(ii) in the case of all other taxable  
 23 years in the transfer period, the sum of the  
 24 qualified current retiree health liabilities  
 25 which the plan reasonably estimates, in ac-

1 cordance with guidance issued by the Sec-  
2 retary, will be incurred for each of such  
3 years.

4 “(D) MINIMUM COST REQUIREMENTS.—

5 “(i) IN GENERAL.—The requirements  
6 of subsection (c)(3) shall be treated as met  
7 if each group health plan or arrangement  
8 under which applicable health benefits are  
9 provided provides applicable health benefits  
10 during the period beginning with the first  
11 year of the transfer period and ending with  
12 the last day of the 4th year following the  
13 transfer period such that the annual aver-  
14 age amount of such benefits provided dur-  
15 ing such period is not less than the appli-  
16 cable employer cost determined under sub-  
17 section (c)(3)(A) with respect to the trans-  
18 fer.

19 “(ii) ELECTION TO MAINTAIN BENE-  
20 FITS.—An employer may elect, in lieu of  
21 the requirements of clause (i), to meet the  
22 requirements of subsection (c)(3) by meet-  
23 ing the requirements of such subsection (as  
24 in effect before the amendments made by  
25 section 535 of the Tax Relief Extension

1 Act of 1999) for each of the years de-  
 2 scribed in the period under clause (i).

3 “(3) COORDINATION WITH OTHER TRANS-  
 4 FERS.—In applying subsection (b)(3) to any subse-  
 5 quent transfer during a taxable year in a transfer  
 6 period, qualified current retiree health liabilities  
 7 shall be reduced by any such liabilities taken into ac-  
 8 count with respect to the qualified future transfer to  
 9 which such period relates.

10 “(4) TRANSFER PERIOD.—For purposes of this  
 11 subsection, the term ‘transfer period’ means, with  
 12 respect to any transfer, a period of consecutive tax-  
 13 able years specified in the election under paragraph  
 14 (1) which begins and ends during the 10-taxable-  
 15 year period beginning with the taxable year of the  
 16 transfer.”.

17 (b) EFFECTIVE DATE.—The amendments made by  
 18 this section shall apply to transfers after the date of the  
 19 enactment of this Act.

20 **SEC. 1332. SPECIAL RULES FOR FUNDING OF COLLEC-**  
 21 **TIVELY BARGAINED RETIREE HEALTH BENE-**  
 22 **FITS.**

23 (a) COLLECTIVELY BARGAINED TRANSFER TREATED  
 24 AS A QUALIFIED TRANSFER.—

1           (1) IN GENERAL.—Section 420(b) of the Inter-  
 2           nal Revenue Code of 1986 (defining qualified trans-  
 3           fer) is amended by redesignating paragraph (5) as  
 4           paragraph (6) and by inserting after paragraph (4)  
 5           the following new paragraph:

6           “(5) A collectively bargained transfer (as de-  
 7           fined in subsection (e)(5)) shall be treated as a  
 8           qualified transfer.”.

9           (2) CONFORMING AMENDMENTS.—

10           (A) Subparagraph (B) of section 420(b)(2)  
 11           of such Code is amended by inserting “or a col-  
 12           lectively bargained transfer” after “paragraph  
 13           (4)”.

14           (B) Paragraph (3) of section 420(b) of  
 15           such Code is amended to read as follows:

16           “(3) LIMITATION ON AMOUNT TRANSFERRED.—

17           “(A) IN GENERAL.—The amount of excess  
 18           pension assets which may be transferred in a  
 19           qualified transfer (other than a collectively bar-  
 20           gained transfer) shall not exceed the amount  
 21           which is reasonably estimated to be the amount  
 22           the employer maintaining the plan will pay  
 23           (whether directly or through reimbursement)  
 24           out of such account during the taxable year of



1 the transfer for qualified current retiree health  
2 liabilities.

3 “(B) EXCEPTION FOR COLLECTIVELY BAR-  
4 GAINED TRANSFERS.—The amount of excess  
5 pension assets which may be transferred in a  
6 collectively bargained transfer shall not exceed  
7 the amount which is reasonably estimated, in  
8 accordance with the provisions of the collective  
9 bargaining agreement and generally accepted  
10 accounting principles, to be the amount the em-  
11 ployer maintaining the plan will pay (whether  
12 directly or through reimbursement) out of such  
13 account during the collectively bargained cost  
14 maintenance period for collectively bargained  
15 retiree health liabilities.”.

16 (b) REQUIREMENTS OF PLANS MAKING COLLEC-  
17 TIVELY BARGAINED TRANSFERS.—

18 (1) IN GENERAL.—Paragraph (1) of section  
19 420(c) of the Internal Revenue Code of 1986 (relat-  
20 ing to requirements of plan transferring assets) is  
21 amended to read as follows:

22 “(1) USE OF TRANSFERRED ASSETS.—

23 “(A) IN GENERAL.—Except in the case of  
24 a collectively bargained transfer, any assets  
25 transferred to a health benefits account in a

1 qualified transfer (and any income allocable  
 2 thereto) shall be used only to pay qualified cur-  
 3 rent retiree health liabilities (other than liabil-  
 4 ities of key employees not taken into account  
 5 under subsection (e)(1)(D)) for the taxable year  
 6 of the transfer (whether directly or through re-  
 7 imbursement).

8 “(B) COLLECTIVELY BARGAINED TRANS-  
 9 FER.—Any assets transferred to a health bene-  
 10 fits account in a collectively bargained transfer  
 11 (and any income allocable thereto) shall be used  
 12 only to pay collectively bargained retiree health  
 13 liabilities (other than liabilities of key employees  
 14 not taken into account under subsection  
 15 (e)(6)(D)) for the taxable year of the transfer  
 16 or for any subsequent taxable year during the  
 17 collectively bargained cost maintenance period  
 18 (whether directly or through reimbursement).

19 “(C) AMOUNTS NOT USED TO PAY FOR  
 20 HEALTH BENEFITS.—

21 “(i) IN GENERAL.—Any assets trans-  
 22 ferred to a health benefits account in a  
 23 qualified transfer (and any income allo-  
 24 cable thereto) which are not used as pro-  
 25 vided in subparagraph (A) (in the case of

a qualified transfer other than a collectively bargained transfer) or cannot be used as provided in subparagraph (B) (in the case of a collectively bargained transfer) shall be transferred out of the account to the transferor plan.

“(ii) TAX TREATMENT OF AMOUNTS.—Any amount transferred out of an account under clause (i)—

“(I) shall not be includible in the gross income of the employer, but

“(II) shall be treated as an employer reversion for purposes of section 4980 (without regard to subsection (d) thereof).

“(D) ORDERING RULE.—For purposes of this section, any amount paid out of a health benefits account shall be treated as paid first out of the assets and income described in subparagraph (A) (in the case of a qualified transfer other than a collectively bargained transfer) or subparagraph (B) (in the case of a collectively bargained transfer).”.

(2) CONFORMING AMENDMENTS.—

1 (A) Subparagraph (A) of section 420(c)(3)  
2 of such Code is amended to read as follows:

3 “(A) IN GENERAL.—The requirements of  
4 this paragraph are met if—

5 “(i) except as provided in clause (ii),  
6 each group health plan or arrangement  
7 under which applicable health benefits are  
8 provided provides that the applicable em-  
9 ployer cost for each taxable year during  
10 the cost maintenance period shall not be  
11 less than the higher of the applicable em-  
12 ployer costs for each of the 2 taxable years  
13 immediately preceding the taxable year of  
14 the qualified transfer, and

15 “(ii) in the case of a collectively bar-  
16 gained transfer, each collectively bargained  
17 group health plan under which collectively  
18 bargained health benefits are provided pro-  
19 vides that the collectively bargained em-  
20 ployer cost for each taxable year during  
21 the collectively bargained cost maintenance  
22 period shall not be less than the amount  
23 specified by the collective bargaining agree-  
24 ment.”.

(B) Section 420(c)(3) of such Code is amended by redesignating subparagraphs (C), (D), and (E) as subparagraphs (D), (E), and (F), respectively, and by inserting after subparagraph (B) the following new subparagraph:

“(C) COLLECTIVELY BARGAINED EMPLOYER COST.—For purposes of this paragraph, the term ‘collectively bargained employer cost’ means the average cost per covered individual of providing collectively bargained retiree health benefits as determined in accordance with the applicable collective bargaining agreement. Such agreement may provide for an appropriate reduction in the collectively bargained employer cost to take into account any portion of the collectively bargained retiree health benefits that is provided or financed by a government program or other source.”.

(C) Subparagraph (E) of section 420(c)(3) of such Code (as redesignated by subparagraph (B)) is amended to read as follows:

“(E) MAINTENANCE PERIOD.—For purposes of this paragraph—

“(i) COST MAINTENANCE PERIOD.—  
The term ‘cost maintenance period’ means

the period of 5 taxable years beginning with the taxable year in which the qualified transfer occurs. If a taxable year is in 2 or more overlapping cost maintenance periods, this paragraph shall be applied by taking into account the highest applicable employer cost required to be provided under subparagraph (A)(i) for such taxable year.

“(ii) COLLECTIVELY BARGAINED COST MAINTENANCE PERIOD.—The term ‘collectively bargained cost maintenance period’ means, with respect to each covered retiree and his covered spouse and dependents, the shorter of—

“(I) the remaining lifetime of such covered retiree and his covered spouse and dependents, or

“(II) the period of coverage provided by the collectively bargained health plan (determined as of the date of the collectively bargained transfer) with respect to such covered retiree and his covered spouse and dependents.”.

1       (c) LIMITATIONS ON EMPLOYER.—Subsection (d) of  
2 section 420 of the Internal Revenue Code of 1986 is  
3 amended to read as follows:

4       “(d) LIMITATIONS ON EMPLOYER.—For purposes of  
5 this title—

6           “(1) DEDUCTION LIMITATIONS.—No deduction  
7 shall be allowed—

8           “(A) for the transfer of any amount to a  
9 health benefits account in a qualified transfer  
10 (or any retransfer to the plan under subsection  
11 (c)(1)(C)),

12           “(B) for qualified current retiree health li-  
13 abilities or collectively bargained retiree health  
14 liabilities paid out of the assets (and income)  
15 described in subsection (c)(1), or

16           “(C) except in the case of a collectively  
17 bargained transfer, for any amounts to which  
18 subparagraph (B) does not apply and which are  
19 paid for qualified current retiree health liabil-  
20 ities for the taxable year to the extent such  
21 amounts are not greater than the excess (if  
22 any) of—

23           “(i) the amount determined under  
24 subparagraph (A) (and income allocable  
25 thereto), over

1                   “(ii) the amount determined under  
2                   subparagraph (B).

3                   “(2) OTHER LIMITATIONS.—

4                   “(A) NO CONTRIBUTIONS ALLOWED.—Ex-  
5                   cept as provided in subparagraph (B), an em-  
6                   ployer may not contribute after December 31,  
7                   1990, any amount to a health benefits account  
8                   or welfare benefit fund (as defined in section  
9                   419(e)(1)) with respect to qualified current re-  
10                  tiree health liabilities for which transferred as-  
11                  sets are required to be used under subsection  
12                  (c)(1)(A).

13                  “(B) EXCEPTION.—An employer may con-  
14                  tribute an amount to a health benefits account  
15                  or welfare benefit fund (as defined in section  
16                  419(e)(1)) with respect to collectively bargained  
17                  retiree health liabilities for which transferred  
18                  assets are required to be used under subsection  
19                  (c)(1)(B), and the deductibility of any such con-  
20                  tribution shall be governed by the limits appli-  
21                  cable to the deductibility of contributions to a  
22                  welfare benefit fund under a collective bar-  
23                  gaining agreement (as determined under section  
24                  419A(f)(5)(A)) without regard to whether such  
25                  contributions are made to a health benefits ac-



1 count or welfare benefit fund and without re-  
 2 gard to the provisions of section 404 or the  
 3 other provisions of this section. The Secretary  
 4 shall provide rules to ensure that the applica-  
 5 tion of this section does not result in a deduc-  
 6 tion being allowed more than once for the same  
 7 contribution or for 2 or more contributions or  
 8 expenditures relating to the same collectively  
 9 bargained retiree health liabilities.”.

10 (d) DEFINITIONS.—Section 420(e) of the Internal  
 11 Revenue Code of 1986 (relating to definition and special  
 12 rules) is amended by adding at the end the following new  
 13 paragraphs:

14 “(5) COLLECTIVELY BARGAINED TRANSFER.—  
 15 The term ‘collectively bargained transfer’ means a  
 16 transfer—

17 “(A) of excess pension assets to a health  
 18 benefits account which is part of such plan in  
 19 a taxable year beginning after December 31,  
 20 2005, and

21 “(B) which does not contravene any other  
 22 provision of law,

23 “(C) with respect to which are met in con-  
 24 nection with the plan—

1 “(i) the use requirements of sub-  
2 section (c)(1),

3 “(ii) the vesting requirements of sub-  
4 section (c)(2), and

5 “(iii) the minimum cost requirements  
6 of subsection (c)(3),

7 “(D) which is made in accordance with a  
8 collective bargaining agreement,

9 “(E) which, before the transfer, the em-  
10 ployer designates, in a written notice delivered  
11 to each employee organization that is a party to  
12 the collective bargaining agreement, as a collec-  
13 tively bargained transfer in accordance with  
14 this section, and

15 “(F) which involves—

16 “(i) a plan maintained by an employer  
17 which, in its taxable year ending in 2005,  
18 provided health benefits or coverage to re-  
19 tirees and their spouses and dependents  
20 under all of the benefit plans maintained  
21 by the employer, but only if the aggregate  
22 cost (including administrative expenses) of  
23 such benefits or coverage which would have  
24 been allowable as a deduction to the em-  
25 ployer (if such benefits or coverage had

1           been provided directly by the employer and  
 2           the employer used the cash receipts and  
 3           disbursements method of accounting) is at  
 4           least 5 percent of the gross receipts of the  
 5           employer (determined in accordance with  
 6           the last sentence of subsection  
 7           (c)(2)(E)(ii)(II)) for such taxable year,

8           “(ii) or a plan maintained by a suc-  
 9           cessor to such employer.

10          Such term shall not include a transfer after De-  
 11          cember 31, 2013.

12          “(6) COLLECTIVELY BARGAINED RETIREE  
 13          HEALTH LIABILITIES.—

14               “(A) IN GENERAL.—The term ‘collectively  
 15          bargained retiree health liabilities’ means the  
 16          present value, as of the beginning of a taxable  
 17          year and determined in accordance with the ap-  
 18          plicable collective bargaining agreement, of all  
 19          collectively bargained health benefits (including  
 20          administrative expenses) for such taxable year  
 21          and all subsequent taxable years during the col-  
 22          lectively bargained cost maintenance period.

23               “(B) REDUCTION FOR AMOUNTS PRE-  
 24          VIOUSLY SET ASIDE.—The amount determined  
 25          under subparagraph (A) shall be reduced by the

value (as of the close of the plan year preceding the year of the collectively bargained transfer) of the assets in all health benefits accounts or welfare benefit funds (as defined in section 419(e)(1)) set aside to pay for the collectively bargained retiree health liabilities.

“(C) KEY EMPLOYEES EXCLUDED.—If an employee is a key employee (within the meaning of section 416(I)(1)) with respect to any plan year ending in a taxable year, such employee shall not be taken into account in computing collectively bargained retiree health liabilities for such taxable year or in calculating collectively bargained employer cost under subsection (c)(3)(C).

“(7) COLLECTIVELY BARGAINED HEALTH BENEFITS.—The term ‘collectively bargained health benefits’ means health benefits or coverage which are provided to—

“(A) retired employees who, immediately before the collectively bargained transfer, are entitled to receive such benefits upon retirement and who are entitled to pension benefits under the plan, and their spouses and dependents, and

1           “(B) if specified by the provisions of the  
 2           collective bargaining agreement governing the  
 3           collectively bargained transfer, active employees  
 4           who, following their retirement, are entitled to  
 5           receive such benefits and who are entitled to  
 6           pension benefits under the plan, and their  
 7           spouses and dependents.

8           “(8) COLLECTIVELY BARGAINED HEALTH  
 9           PLAN.—The term ‘collectively bargained health plan’  
 10          means a group health plan or arrangement for re-  
 11          tired employees and their spouses and dependents  
 12          that is maintained pursuant to 1 or more collective  
 13          bargaining agreements.”.

14          (e) CONFORMING AMENDMENT.—The last sentence  
 15          of section 401(h) of the Internal Revenue Code of 1986  
 16          is amended by inserting “(other than contributions with  
 17          respect to collectively bargained retiree health liabilities  
 18          within the meaning of section 420(e)(6))” after “medical  
 19          benefits”.

20          (f) EFFECTIVE DATE.—The amendments made by  
 21          this section shall apply to years beginning after December  
 22          31, 2004.

1 **SEC. 1333. ALLOWANCE OF RESERVE FOR MEDICAL BENE-**  
 2 **FITS OF PLANS SPONSORED BY BONA FIDE**  
 3 **ASSOCIATIONS.**

4 (a) IN GENERAL.—Section 419A(c) of the Internal  
 5 Revenue Code of 1986 (relating to account limit) is  
 6 amended by adding at the end the following new para-  
 7 graph:

8 “(6) ADDITIONAL RESERVE FOR MEDICAL BEN-  
 9 EFITS OF BONA FIDE ASSOCIATION PLANS.—

10 “(A) IN GENERAL.—An applicable account  
 11 limit for any taxable year may include a reserve  
 12 in an amount not to exceed 35 percent of the  
 13 sum of—

14 “(i) the qualified direct costs, and

15 “(ii) the change in claims incurred  
 16 but unpaid,  
 17 for such taxable year with respect to medical  
 18 benefits (other than post-retirement medical  
 19 benefits).

20 “(B) APPLICABLE ACCOUNT LIMIT.—For  
 21 purposes of this subsection, the term ‘applicable  
 22 account limit’ means an account limit for a  
 23 qualified asset account with respect to medical  
 24 benefits provided through a plan maintained by  
 25 a bona fide association (as defined in section

1           2791(d)(3) of the Public Health Service Act  
 2           (42 U.S.C. 300gg–91(d)(3))”.

3           (b) EFFECTIVE DATE.—The amendment made by  
 4 this section shall apply to taxable years ending after De-  
 5 cember 31, 2005.

6   **PART II—CASH OR DEFERRED ARRANGEMENTS**

7   **SEC. 1336. TREATMENT OF ELIGIBLE COMBINED DEFINED**  
 8                   **BENEFIT PLANS AND QUALIFIED CASH OR**  
 9                   **DEFERRED ARRANGEMENTS.**

10          (a) AMENDMENTS OF INTERNAL REVENUE CODE.—  
 11 Section 414 of the Internal Revenue Code of 1986, as  
 12 amended by this Act, is amended by adding at the end  
 13 the following new subsection:

14          “(x) SPECIAL RULES FOR ELIGIBLE COMBINED DE-  
 15 FINED BENEFIT PLANS AND QUALIFIED CASH OR DE-  
 16 FERRED ARRANGEMENTS.—

17               “(1) GENERAL RULE.—Except as provided in  
 18 this subsection, the requirements of this title shall  
 19 be applied to any defined benefit plan or applicable  
 20 defined contribution plan which are part of an eligi-  
 21 ble combined plan in the same manner as if each  
 22 such plan were not a part of the eligible combined  
 23 plan.

24               “(2) ELIGIBLE COMBINED PLAN.—For pur-  
 25 poses of this subsection—

1           “(A) IN GENERAL.—The term ‘eligible  
2 combined plan’ means a plan—

3           “(i) which is maintained by an em-  
4 ployer which, at the time the plan is estab-  
5 lished, is a small employer,

6           “(ii) which consists of a defined ben-  
7 efit plan and an applicable defined con-  
8 tribution plan,

9           “(iii) the assets of which are held in  
10 a single trust forming part of the plan and  
11 are clearly identified and allocated to the  
12 defined benefit plan and the applicable de-  
13 fined contribution plan to the extent nec-  
14 essary for the separate application of this  
15 title under paragraph (1), and

16           “(iv) with respect to which the ben-  
17 efit, contribution, vesting, and non-  
18 discrimination requirements of subpara-  
19 graphs (B), (C), (D), (E), and (F) are  
20 met.

21 For purposes of this subparagraph, the term  
22 ‘small employer’ has the meaning given such  
23 term by section 4980D(d)(2), except that such  
24 section shall be applied by substituting ‘500’ for  
25 ‘50’ each place it appears.



“(B) BENEFIT REQUIREMENTS.—

“(i) IN GENERAL.—The benefit requirements of this subparagraph are met with respect to the defined benefit plan forming part of the eligible combined plan if the accrued benefit of each participant derived from employer contributions, when expressed as an annual retirement benefit, is not less than the applicable percentage of the participant’s final average pay. For purposes of this clause, final average pay shall be determined using the period of consecutive years (not exceeding 5) during which the participant had the greatest aggregate compensation from the employer.

“(ii) APPLICABLE PERCENTAGE.—For purposes of clause (i), the applicable percentage is the lesser of—

“(I) 1 percent multiplied by the number of years of service with the employer, or

“(II) 20 percent.

“(iii) SPECIAL RULE FOR CASH BALANCE PLANS.—If the defined benefit plan under clause (i) is a qualified cash balance

1 plan (within the meaning of section  
 2 411(b)(5)), the plan shall be treated as  
 3 meeting the requirements of clause (i) with  
 4 respect to any plan year if each participant  
 5 receives pay credit for the year which is  
 6 not less than the percentage of compensa-  
 7 tion determined in accordance with the fol-  
 8 lowing table:

<b>“If the participant’s age as of the beginning of the year is—</b>	<b>The percentage is—</b>
30 or less .....	2
Over 30 but less than 40 .....	4
40 or over but less than 50 .....	6
50 or over .....	8.

9 “(iv) YEARS OF SERVICE.—For pur-  
 10 poses of this subparagraph, years of serv-  
 11 ice shall be determined under the rules of  
 12 paragraphs (4), (5), and (6) of section  
 13 411(a), except that the plan may not dis-  
 14 regard any year of service because of a  
 15 participant making, or failing to make, any  
 16 elective deferral with respect to the quali-  
 17 fied cash or deferred arrangement to which  
 18 subparagraph (C) applies.

19 “(C) CONTRIBUTION REQUIREMENTS.—

20 “(i) IN GENERAL.—The contribution  
 21 requirements of this subparagraph with re-  
 22 spect to any applicable defined contribu-

tion plan forming part of eligible combined  
plan are met if—

“(I) the qualified cash or deferred arrangement included in such plan constitutes an automatic contribution arrangement, and

“(II) the employer is required to make matching contributions on behalf of each employee eligible to participate in the arrangement in an amount equal to 50 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 4 percent of compensation.

Rules similar to the rules of clauses (ii) and (iii) of section 401(k)(12)(B) shall apply for purposes of this clause.

“(ii) NONELECTIVE CONTRIBUTIONS.—An applicable defined contribution plan shall not be treated as failing to meet the requirements of clause (i) because the employer makes nonelective contributions under the plan but such contributions shall not be taken into account in determining

1           whether the requirements of clause (i)(II)  
2           are met.

3           “(D) VESTING REQUIREMENTS.—The vest-  
4           ing requirements of this subparagraph are met  
5           if—

6                   “(i) in the case of a defined benefit  
7                   plan forming part of an eligible combined  
8                   plan an employee who has completed at  
9                   least 3 years of service has a nonforfeitable  
10                  right to 100 percent of the employee’s ac-  
11                  crued benefit under the plan derived from  
12                  employer contributions, and

13                  “(ii) in the case of an applicable de-  
14                  fined contribution plan forming part of eli-  
15                  gible combined plan—

16                   “(I) an employee has a non-  
17                   forfeitable right to any matching con-  
18                   tribution made under the qualified  
19                   cash or deferred arrangement included  
20                   in such plan by an employer with re-  
21                   spect to any elective contribution, in-  
22                   cluding matching contributions in ex-  
23                   cess of the contributions required  
24                   under subparagraph (C)(i)(II), and

1                   “(II) an employee who has com-  
2                   pleted at least 3 years of service has  
3                   a nonforfeitable right to 100 percent  
4                   of the employee’s accrued benefit de-  
5                   rived under the arrangement from  
6                   nonelective contributions of the em-  
7                   ployer.

8                   For purposes of this subparagraph, the  
9                   rules of section 411 shall apply to the ex-  
10                  tent not inconsistent with this subpara-  
11                  graph.

12                  “(E) UNIFORM PROVISION OF BENE-  
13                  FITS.—In the case of a defined benefit plan or  
14                  applicable defined contribution plan forming  
15                  part of an eligible combined plan, the require-  
16                  ments of this subparagraph are met if all bene-  
17                  fits under each such plan, and all rights and  
18                  features under each such plan, must be pro-  
19                  vided uniformly to all participants.

20                  “(F) REQUIREMENTS MUST BE MET WITH-  
21                  OUT TAKING INTO ACCOUNT SOCIAL SECURITY  
22                  AND SIMILAR CONTRIBUTIONS AND BENEFITS  
23                  OR OTHER PLANS.—

1 “(i) IN GENERAL.—The requirements  
 2 of this subparagraph are met if the re-  
 3 quirements of clauses (ii) and (iii) are met.

4 “(ii) SOCIAL SECURITY AND SIMILAR  
 5 CONTRIBUTIONS.—The requirements of  
 6 this clause are met if—

7 “(I) the requirements of subpara-  
 8 graphs (B) and (C) are met without  
 9 regard to section 401(l), and

10 “(II) the requirements of sections  
 11 401(a)(4) and 410(b) are met with re-  
 12 spect to both the applicable defined  
 13 contribution plan and defined benefit  
 14 plan forming part of an eligible com-  
 15 bined plan without regard to section  
 16 401(l).

17 “(iii) OTHER PLANS AND ARRANGE-  
 18 MENTS.—The requirements of this clause  
 19 are met if the applicable defined contribu-  
 20 tion plan and defined benefit plan forming  
 21 part of an eligible combined plan meet the  
 22 requirements of sections 401(a)(4) and  
 23 410(b) without being combined with any  
 24 other plan.

1           “(3) NONDISCRIMINATION REQUIREMENTS FOR  
2           QUALIFIED CASH OR DEFERRED ARRANGEMENT.—

3           “(A) IN GENERAL.—A qualified cash or  
4           deferred arrangement which is included in an  
5           applicable defined contribution plan forming  
6           part of an eligible combined plan shall be treat-  
7           ed as meeting the requirements of section  
8           401(k)(3)(A)(ii) if the requirements of para-  
9           graph (2)(C) are met with respect to such ar-  
10          rangement.

11          “(B) MATCHING CONTRIBUTIONS.—In ap-  
12          plying section 401(m)(11) to any matching con-  
13          tribution with respect to a contribution to which  
14          paragraph (2)(C) applies, the contribution re-  
15          quirement of paragraph (2)(C) and the notice  
16          requirements of paragraph (5)(B) shall be sub-  
17          stituted for the requirements otherwise applica-  
18          ble under clauses (i) and (ii) of section  
19          401(m)(11)(A).

20          “(4) SATISFACTION OF TOP-HEAVY RULES.—A  
21          defined benefit plan and applicable defined contribu-  
22          tion plan forming part of an eligible combined plan  
23          for any plan year shall be treated as meeting the re-  
24          quirements of section 416 for the plan year.

1           “(5) AUTOMATIC CONTRIBUTION ARRANGE-  
2           MENT.—For purposes of this subsection—

3           “(A) IN GENERAL.—A qualified cash or  
4           deferred arrangement shall be treated as an  
5           automatic contribution arrangement if the  
6           arrangement—

7           “(i) provides that each employee eligi-  
8           ble to participate in the arrangement is  
9           treated as having elected to have the em-  
10          ployer make elective contributions in an  
11          amount equal to 4 percent of the employ-  
12          ee’s compensation unless the employee spe-  
13          cifically elects not to have such contribu-  
14          tions made or to have such contributions  
15          made at a different rate, and

16          “(ii) meets the notice requirements  
17          under subparagraph (B).

18          “(B) NOTICE REQUIREMENTS.—

19          “(i) IN GENERAL.—The requirements  
20          of this subparagraph are met if the re-  
21          quirements of clauses (ii) and (iii) are met.

22          “(ii) REASONABLE PERIOD TO MAKE  
23          ELECTION.—The requirements of this  
24          clause are met if each employee to whom  
25          subparagraph (A)(i) applies—



1 “(I) receives a notice explaining  
 2 the employee’s right under the ar-  
 3 rangement to elect not to have elective  
 4 contributions made on the employee’s  
 5 behalf or to have the contributions  
 6 made at a different rate, and

7 “(II) has a reasonable period of  
 8 time after receipt of such notice and  
 9 before the first elective contribution is  
 10 made to make such election.

11 “(iii) ANNUAL NOTICE OF RIGHTS  
 12 AND OBLIGATIONS.—The requirements of  
 13 this clause are met if each employee eligi-  
 14 ble to participate in the arrangement is,  
 15 within a reasonable period before any year,  
 16 given notice of the employee’s rights and  
 17 obligations under the arrangement.

18 The requirements of clauses (i) and (ii) of sec-  
 19 tion 401(k)(12)(D) shall be met with respect to  
 20 the notices described in clauses (ii) and (iii) of  
 21 this subparagraph.

22 “(6) COORDINATION WITH OTHER REQUIRE-  
 23 MENTS.—

1           “(A) TREATMENT OF SEPARATE PLANS.—  
 2           Section 414(k) shall not apply to an eligible  
 3           combined plan.

4           “(B) REPORTING.—An eligible combined  
 5           plan shall be treated as a single plan for pur-  
 6           poses of sections 6058 and 6059.

7           “(7) APPLICABLE DEFINED CONTRIBUTION  
 8           PLAN.—For purposes of this subsection—

9           “(A) IN GENERAL.—The term ‘applicable  
 10          defined contribution plan’ means a defined con-  
 11          tribution plan which includes a qualified cash or  
 12          deferred arrangement.

13          “(B) QUALIFIED CASH OR DEFERRED AR-  
 14          RANGEMENT.—The term ‘qualified cash or de-  
 15          ferred arrangement’ has the meaning given  
 16          such term by section 401(k)(2).”.

17          (b) AMENDMENTS OF ERISA.—

18               (1) IN GENERAL.—Section 210 of the Employee  
 19          Retirement Income Security Act of 1974 is amended  
 20          by adding at the end the following new subsection:

21          “(e) SPECIAL RULES FOR ELIGIBLE COMBINED DE-  
 22          FINED BENEFIT PLANS AND QUALIFIED CASH OR DE-  
 23          FERRED ARRANGEMENTS.—

24               “(1) GENERAL RULE.—Except as provided in  
 25          this subsection, this Act shall be applied to any de-

1       defined benefit plan or applicable individual account  
 2       plan which are part of an eligible combined plan in  
 3       the same manner as if each such plan were not a  
 4       part of the eligible combined plan.

5           “(2) ELIGIBLE COMBINED PLAN.—For pur-  
 6       poses of this subsection—

7           “(A) IN GENERAL.—The term ‘eligible  
 8       combined plan’ means a plan—

9           “(i) which, at the time the plan is es-  
 10       tablished, is maintained by a small em-  
 11       ployer,

12          “(ii) which consists of a defined ben-  
 13       efit plan and an applicable individual ac-  
 14       count plan each of which qualifies under  
 15       section 401(a) of the Internal Revenue  
 16       Code of 1986,

17          “(iii) the assets of which are held in  
 18       a single trust forming part of the plan and  
 19       are clearly identified and allocated to the  
 20       defined benefit plan and the applicable in-  
 21       dividual account plan to the extent nec-  
 22       essary for the separate application of this  
 23       Act under paragraph (1), and

24          “(iv) with respect to which the ben-  
 25       efit, contribution, vesting, and non-

1 discrimination requirements of subpara-  
2 graphs (B), (C), (D), (E), and (F) are  
3 met.

4 For purposes of this subparagraph, the term  
5 ‘small employer’ has the meaning given such  
6 term by section 4980D(d)(2), except that such  
7 section shall be applied by substituting ‘500’ for  
8 ‘50’ each place it appears.

9 “(B) BENEFIT REQUIREMENTS.—

10 “(i) IN GENERAL.—The benefit re-  
11 quirements of this subparagraph are met  
12 with respect to the defined benefit plan  
13 forming part of the eligible combined plan  
14 if the accrued benefit of each participant  
15 derived from employer contributions, when  
16 expressed as an annual retirement benefit,  
17 is not less than the applicable percentage  
18 of the participant’s final average pay. For  
19 purposes of this clause, final average pay  
20 shall be determined using the period of  
21 consecutive years (not exceeding 5) during  
22 which the participant had the greatest ag-  
23 gregate compensation from the employer.

1 “(ii) APPLICABLE PERCENTAGE.—For  
 2 purposes of clause (i), the applicable per-  
 3 centage is the lesser of—

4 “(I) 1 percent multiplied by the  
 5 number of years of service with the  
 6 employer, or

7 “(II) 20 percent.

8 “(iii) SPECIAL RULE FOR CASH BAL-  
 9 ANCE PLANS.—If the defined benefit plan  
 10 under clause (i) is a qualified cash balance  
 11 plan (within the meaning of section  
 12 204(b)(5)), the plan shall be treated as  
 13 meeting the requirements of clause (i) with  
 14 respect to any plan year if each participant  
 15 receives pay credit for the year which is  
 16 not less than the percentage of compensa-  
 17 tion determined in accordance with the fol-  
 18 lowing table:

<b>“If the participant’s age as of the beginning of the year is—</b>	<b>The percentage is—</b>
30 or less .....	2
Over 30 but less than 40 .....	4
40 or over but less than 50 .....	6
50 or over .....	8.

19 “(iv) YEARS OF SERVICE.—For pur-  
 20 poses of this subparagraph, years of serv-  
 21 ice shall be determined under the rules of  
 22 paragraphs (1), (2), and (3) of section

203(b), except that the plan may not disregard any year of service because of a participant making, or failing to make, any elective deferral with respect to the qualified cash or deferred arrangement to which subparagraph (C) applies.

“(C) CONTRIBUTION REQUIREMENTS.—

“(i) IN GENERAL.—The contribution requirements of this subparagraph with respect to any applicable individual account plan forming part of eligible combined plan are met if—

“(I) the qualified cash or deferred arrangement included in such plan constitutes an automatic contribution arrangement, and

“(II) the employer is required to make matching contributions on behalf of each employee eligible to participate in the arrangement in an amount equal to 50 percent of the elective contributions of the employee to the extent such elective contributions do not exceed 4 percent of compensation.

Rules similar to the rules of clauses (ii) and (iii) of section 401(k)(12)(B) of the Internal Revenue Code of 1986 shall apply for purposes of this clause.

“(ii) NONELECTIVE CONTRIBUTIONS.—An applicable individual account plan shall not be treated as failing to meet the requirements of clause (i) because the employer makes nonelective contributions under the plan but such contributions shall not be taken into account in determining whether the requirements of clause (i)(II) are met.

“(D) VESTING REQUIREMENTS.—The vesting requirements of this subparagraph are met if—

“(i) in the case of a defined benefit plan forming part of an eligible combined plan an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee’s accrued benefit under the plan derived from employer contributions, and

“(ii) in the case of an applicable individual account plan forming part of eligible combined plan—

“(I) an employee has a nonforfeitable right to any matching contribution made under the qualified cash or deferred arrangement included in such plan by an employer with respect to any elective contribution, including matching contributions in excess of the contributions required under subparagraph (C)(i)(II), and

“(II) an employee who has completed at least 3 years of service has a nonforfeitable right to 100 percent of the employee’s accrued benefit derived under the arrangement from nonelective contributions of the employer.

For purposes of this subparagraph, the rules of section 203 shall apply to the extent not inconsistent with this subparagraph.

“(E) UNIFORM PROVISION OF BENEFITS.—In the case of a defined benefit plan or



1 applicable individual account plan forming part  
 2 of an eligible combined plan, the requirements  
 3 of this subparagraph are met if all benefits  
 4 under each such plan, and all rights and fea-  
 5 tures under each such plan, must be provided  
 6 uniformly to all participants.

7 “(F) REQUIREMENTS MUST BE MET WITH-  
 8 OUT TAKING INTO ACCOUNT SOCIAL SECURITY  
 9 AND SIMILAR CONTRIBUTIONS AND BENEFITS  
 10 OR OTHER PLANS.—

11 “(i) IN GENERAL.—The requirements  
 12 of this subparagraph are met if the re-  
 13 quirements of clauses (ii) and (iii) are met.

14 “(ii) SOCIAL SECURITY AND SIMILAR  
 15 CONTRIBUTIONS.—The requirements of  
 16 this clause are met if—

17 “(I) the requirements of subpara-  
 18 graphs (B) and (C) are met without  
 19 regard to section 401(l) of the Inter-  
 20 nal Revenue Code of 1986, and

21 “(II) the requirements of sections  
 22 401(a)(4) and 410(b) of the Internal  
 23 Revenue Code of 1986 are met with  
 24 respect to both the applicable defined  
 25 contribution plan and defined benefit

plan forming part of an eligible combined plan without regard to section 401(l) of the Internal Revenue Code of 1986.

“(iii) OTHER PLANS AND ARRANGEMENTS.—The requirements of this clause are met if the applicable defined contribution plan and defined benefit plan forming part of an eligible combined plan meet the requirements of sections 401(a)(4) and 410(b) of the Internal Revenue Code of 1986 without being combined with any other plan.

“(3) NONDISCRIMINATION REQUIREMENTS FOR QUALIFIED CASH OR DEFERRED ARRANGEMENT.—

“(A) IN GENERAL.—A qualified cash or deferred arrangement which is included in an applicable individual account plan forming part of an eligible combined plan shall be treated as meeting the requirements of section 401(k)(3)(A)(ii) of the Internal Revenue Code of 1986 if the requirements of subparagraph (C) are met with respect to such arrangement.

“(B) MATCHING CONTRIBUTIONS.—In applying section 401(m)(11) of such Code to any

1 matching contribution with respect to a con-  
 2 tribution to which paragraph (2)(C) applies, the  
 3 contribution requirement of paragraph (2)(C)  
 4 and the notice requirements of paragraph  
 5 (5)(B) shall be substituted for the requirements  
 6 otherwise applicable under clauses (i) and (ii) of  
 7 section 401(m)(11)(A) of such Code.

8 “(4) AUTOMATIC CONTRIBUTION ARRANGE-  
 9 MENT.—For purposes of this subsection—

10 “(A) IN GENERAL.—A qualified cash or  
 11 deferred arrangement shall be treated as an  
 12 automatic contribution arrangement if the  
 13 arrangement—

14 “(i) provides that each employee eligi-  
 15 ble to participate in the arrangement is  
 16 treated as having elected to have the em-  
 17 ployer make elective contributions in an  
 18 amount equal to 4 percent of the employ-  
 19 ee’s compensation unless the employee spe-  
 20 cifically elects not to have such contribu-  
 21 tions made or to have such contributions  
 22 made at a different rate, and

23 “(ii) meets the notice requirements  
 24 under subparagraph (B).

25 “(B) NOTICE REQUIREMENTS.—

1 “(i) IN GENERAL.—The requirements  
 2 of this subparagraph are met if the re-  
 3 quirements of clauses (ii) and (iii) are met.

4 “(ii) REASONABLE PERIOD TO MAKE  
 5 ELECTION.—The requirements of this  
 6 clause are met if each employee to whom  
 7 subparagraph (A)(i) applies—

8 “(I) receives a notice explaining  
 9 the employee’s right under the ar-  
 10 rangement to elect not to have elective  
 11 contributions made on the employee’s  
 12 behalf or to have the contributions  
 13 made at a different rate, and

14 “(II) has a reasonable period of  
 15 time after receipt of such notice and  
 16 before the first elective contribution is  
 17 made to make such election.

18 “(iii) ANNUAL NOTICE OF RIGHTS  
 19 AND OBLIGATIONS.—The requirements of  
 20 this clause are met if each employee eligi-  
 21 ble to participate in the arrangement is,  
 22 within a reasonable period before any year,  
 23 given notice of the employee’s rights and  
 24 obligations under the arrangement.

1           The requirements of clauses (i) and (ii) of sec-  
 2           tion 401(k)(12)(D) of the Internal Revenue  
 3           Code of 1986 shall be met with respect to the  
 4           notices described in clauses (ii) and (iii) of this  
 5           subparagraph.

6           “(5) COORDINATION WITH OTHER REQUIRE-  
 7           MENTS.—

8                   “(A) TREATMENT OF SEPARATE PLANS.—  
 9           Section 414(k) of the Internal Revenue Code of  
 10          1986 shall not apply to an eligible combined  
 11          plan.

12                   “(B) REPORTING.—An eligible combined  
 13          plan shall be treated as a single plan for pur-  
 14          poses of section 103.

15           “(6) APPLICABLE INDIVIDUAL ACCOUNT  
 16          PLAN.—For purposes of this subsection—

17                   “(A) IN GENERAL.—The term ‘applicable  
 18          individual account plan’ means an individual ac-  
 19          count plan which includes a qualified cash or  
 20          deferred arrangement.

21                   “(B) QUALIFIED CASH OR DEFERRED AR-  
 22          RANGEMENT.—The term ‘qualified cash or de-  
 23          ferred arrangement’ has the meaning given  
 24          such term by section 401(k)(2) of the Internal  
 25          Revenue Code of 1986.”.

1 (2) CONFORMING CHANGES.—

2 (A) The heading for section 210 of such  
3 Act is amended to read as follows:

4 **“SEC. 210. MULTIPLE EMPLOYER PLANS AND OTHER SPE-**  
5 **CIAL RULES.”.**

6 (B) The table of contents in section 1 of  
7 such Act is amended by striking the item relat-  
8 ing to section 210 and inserting the following  
9 new item:

“Sec. 210. Multiple employer plans and other special rules”.

10 (c) EFFECTIVE DATE.—The amendments made by  
11 this section shall apply to plan years beginning after De-  
12 cember 31, 2008.

13 **SEC. 1337. STATE AND LOCAL GOVERNMENTS ELIGIBLE TO**  
14 **MAINTAIN SECTION 401(k) PLANS.**

15 (a) IN GENERAL.—Clause (ii) of section  
16 401(k)(4)(B) of the Internal Revenue Code of 1986 (relat-  
17 ing to governments ineligible) is amended to read as fol-  
18 lows:

19 “(ii) GOVERNMENTS ELIGIBLE.—A  
20 State or local government or political sub-  
21 division thereof, or any agency or instru-  
22 mentality thereof, may include a qualified  
23 cash or deferred arrangement as part of a  
24 plan maintained by it.”

1 (b) COORDINATION WITH SECTION 457 LIMITS.—  
 2 Section 402(g) of the Internal Revenue Code of 1986 is  
 3 amended by adding at the end the following:

4 “(9) COORDINATION OF SECTION 457 LIMITS  
 5 FOR STATE AND LOCAL GOVERNMENTAL PLANS.—

6 “(A) IN GENERAL.—Except as provided in  
 7 subparagraph (B), in the case of an individual  
 8 who is a participant in 1 or more qualified cash  
 9 or deferred arrangements maintained by a gov-  
 10 ernmental entity described in section  
 11 401(k)(4)(B)(ii), the amount excludable from  
 12 gross income under paragraph (1) with respect  
 13 to the individual for any taxable year with re-  
 14 spect to elective deferrals under such arrange-  
 15 ments shall be reduced by the aggregate  
 16 amounts deferred under section 457 with re-  
 17 spect to the individual for the taxable year  
 18 under 1 or more eligible deferred compensation  
 19 plans (as defined in section 457(b)) maintained  
 20 by an employer described in section  
 21 457(e)(1)(A).

22 “(B) SPECIAL RULE FOR PRE-1986 GRAND-  
 23 FATHERED PLANS.—Subparagraph (A) shall  
 24 not apply to any qualified cash or deferred ar-  
 25 rangement maintained by a governmental entity

1 described in section 401(k)(4)(B)(ii) if the ar-  
 2 rangement (or any predecessor) was adopted by  
 3 the entity before May 6, 1986, or treated as so  
 4 adopted under section 1116(f)(2)(B) of the Tax  
 5 Reform Act of 1986.”

6 (c) EFFECTIVE DATES.—The amendments made by  
 7 this section shall apply to plan years beginning after De-  
 8 cember 31, 2005.

### 9 **PART III—EXCESS CONTRIBUTIONS**

#### 10 **SEC. 1339. EXCESS CONTRIBUTIONS.**

11 (a) EXPANSION OF CORRECTIVE DISTRIBUTION PE-  
 12 RIOD FOR AUTOMATIC CONTRIBUTION ARRANGE-  
 13 MENTS.—Subsection (f) of section 4979 of the Internal  
 14 Revenue Code of 1986 is amended—

15 (1) by and inserting “(6 months in the case of  
 16 an excess contribution or excess aggregate contribu-  
 17 tion to an eligible automatic contribution arrange-  
 18 ment (as defined in section 414(w)(3)))” after “2½  
 19 months” in paragraph (1), and

20 (2) by striking “2½ MONTHS OF” in the head-  
 21 ing and inserting “SPECIFIED PERIOD AFTER”.

22 (b) YEAR OF INCLUSION.—Paragraph (2) of section  
 23 4979(f) of such Code is amended to read as follows:

24 “(2) YEAR OF INCLUSION.—Any amount dis-  
 25 tributed as provided in paragraph (1) shall be treat-



ed as earned and received by the recipient in the recipient's taxable year in which such distributions were made."

(c) SIMPLIFICATION OF ALLOCABLE EARNINGS.—

(1) SECTION 4979.—Subsection (f) of section 4979 of such Code is amended—

(A) by adding "through the end of the plan year for which the contribution was made" after "thereto" in paragraph (1), and

(B) by adding "through the end of the plan year for which the contributions were made" after "thereto" in paragraph (2)(B).

(2) SECTION 401(k) AND 401(M).—

(A) Clause (i) of section 401(k)(8)(A) is amended by adding "through the end of such year" after "such contributions".

(B) Subparagraph (A) of section 401(m)(6) of such Code is amended by adding "through the end of such year" after "to such contributions".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to years beginning after December 31, 2005.

**PART IV—OTHER PROVISIONS****SEC. 1341. AMENDMENTS RELATING TO PROHIBITED  
TRANSACTIONS.****(a) EXEMPTION FOR BLOCK TRADING.—**

(1) IN GENERAL.—Section 408(b) of the Employee Retirement Income Security Act (29 U.S.C. 1108(b)) is amended by adding at the end the following new paragraph:

**“(14) BLOCK TRADING.—**

**“(A) IN GENERAL.—**Any transaction involving the purchase or sale of securities between a plan and a party in interest (other than a fiduciary who has investment discretion or control with respect to the assets involved in the transaction or is providing investment advice as a fiduciary for purposes of this title to enter into the transaction) with respect to a plan if—

“(i) the transaction involves a block trade,

“(ii) at the time of the transaction, the interest of the plan (together with the interests of any other plans maintained by the same plan sponsor) does not exceed 10 percent of the aggregate size of the block trade,

1 “(iii) the terms of the transaction, in-  
 2 cluding the price, are at least as favorable  
 3 to the plan as an arm’s length transaction,  
 4 and

5 “(iv) compensation associated with the  
 6 purchase and sale is not greater than an  
 7 arm’s length transaction with an unrelated  
 8 party.

9 “(B) BLOCK TRADE.—For purposes of this  
 10 paragraph, the term ‘block trade’ includes any  
 11 trade of at least 10,000 shares or with a mar-  
 12 ket value of at least \$200,000 which will be al-  
 13 located across two or more unrelated client ac-  
 14 counts of a fiduciary.”.

15 (2) CONFORMING AMENDMENTS.—

16 (A) Section 4975(d) of such Code is  
 17 amended—

18 (i) by striking “or” at the end of  
 19 paragraph (15),

20 (ii) by striking the period at the end  
 21 of paragraph (16)(F) and inserting “; or”,  
 22 and

23 (iii) by adding at the end the fol-  
 24 lowing new paragraph:

1           “(17) any transaction involving the purchase or  
 2           sale of securities between a plan and a disqualified  
 3           person (other than a fiduciary who has investment  
 4           discretion or control over the transaction or is pro-  
 5           viding investment advice as a fiduciary for purposes  
 6           of title I of the Employee Retirement Income Secu-  
 7           rity Act to enter into the transaction) with respect  
 8           to a plan if—

9                   “(A) the transaction involves a block trade,

10                   “(B) at the time of the transaction, the in-  
 11                   terest of the plan (together with the interests of  
 12                   any other plans maintained by the same plan  
 13                   sponsor) does not exceed 10 percent of the ag-  
 14                   gregate size of the block trade,

15                   “(C) the terms of the transaction, includ-  
 16                   ing the price, are at least as favorable to the  
 17                   plan as an arm’s length transaction, and

18                   “(D) compensation associated with the  
 19                   purchase and sale is not greater than an arm’s  
 20                   length transaction with an unrelated party.”.

21                   (B) Section 4975(e) of such Code is  
 22                   amended by adding at the end the following  
 23                   new paragraph:

24                   “(11) BLOCK TRADE.—The term ‘block trade’  
 25                   includes any trade of at least 10,000 shares or with

1 a market value of at least \$200,000 which will be al-  
 2 located across two or more unrelated client accounts  
 3 of a fiduciary.”.

4 (b) BONDING RELIEF.—Section 412(a) of such Act  
 5 (29 U.S.C. 1112(a)) is amended—

6 (1) by redesignating paragraph (2) as para-  
 7 graph (3),

8 (2) by striking “and” at the end of paragraph  
 9 (1), and

10 (3) by inserting after paragraph (1) the fol-  
 11 lowing new paragraph:

12 “(2) no bond shall be required of any entity  
 13 which is registered as a broker or a dealer under  
 14 section 15(b) of the Securities Exchange Act of  
 15 1934 (15 U.S.C. 78o(b)) if the broker or dealer is  
 16 subject to the fidelity bond requirements of a self-  
 17 regulatory organization (within the meaning of sec-  
 18 tion 3(a)(26) of such Act (15 U.S.C. 78c(a)(26)).”.

19 (c) EXEMPTION FOR FINANCIAL MARKETS TRADING  
 20 SYSTEMS.—

21 (1) IN GENERAL.—Section 408(b) of such Act,  
 22 as amended by subsection (b)(1), is amended by  
 23 adding at the end the following new paragraph:

24 “(15) FINANCIAL MARKETS TRADING SYS-  
 25 TEMS.—Any transaction involving the purchase and

1 sale of securities between a plan and a fiduciary or  
2 a party in interest if—

3 “(A) the transaction is executed through—

4 “(i) a national securities exchange or  
5 a trading system owned by a national secu-  
6 rities association registered with the Secu-  
7 rities and Exchange Commission, regard-  
8 less of whether such fiduciary or party in  
9 interest (or any affiliate of either) has an  
10 interest in such exchange or trading sys-  
11 tem,

12 “(ii) an alternative trading system or  
13 electronic communication network subject  
14 to regulation and oversight by the Securi-  
15 ties and Exchange Commission, regardless  
16 of whether such fiduciary or party in inter-  
17 est (or any affiliate of either) has an inter-  
18 est in such alternative trading system or  
19 electronic communications network, or

20 “(iii) any other trading system for se-  
21 curities or other property approved by the  
22 Secretary through regulatory or exemptive  
23 relief,

24 “(B) the price associated with the pur-  
25 chase and sale is at least as favorable as an

1 arm's length transaction with an unrelated  
2 party,

3 “(C) the compensation associated with the  
4 purchase and sale is not greater than an arm's  
5 length transaction with an unrelated party,

6 “(D) in the event the fiduciary or party in  
7 interest directing the transaction (or any affil-  
8 iate of either) has an ownership interest in the  
9 trading system (other than an exchange or  
10 trading system described in subparagraph  
11 (A)(i)), the execution of transactions on such  
12 system is annually authorized by a plan fidu-  
13 ciary,

14 “(E) the transaction is executed in accord-  
15 ance with the nondiscretionary rules and proce-  
16 dures adopted by such trading system to match  
17 offsetting orders, and

18 “(F) in the event the transaction is not ex-  
19 ecuted on an exchange or trading system de-  
20 scribed in subparagraph (A)(i)—

21 “(i) neither the trading system nor  
22 the parties to the transaction take into ac-  
23 count the identity of the parties in the exe-  
24 cution of trades, and the parties to the  
25 transaction do not actually know the iden-

tity of the other at the time that the terms  
and price of the transaction are agreed to,  
or

“(ii) the transaction is effected pursuant to rules designed to match purchases and sales at the best price available through the trading system.”.

(2) CONFORMING AMENDMENT.—Section 4975(d) of such Code (as amended by subsection (b)(2)) is amended—

(A) by striking “or” at the end of paragraph (16),

(B) by striking the period at the end of paragraph (17)(E) and inserting “; or”, and

(C) by adding at the end the following new paragraph:

“(18) any transaction involving the purchase and sale of securities or other property between a plan and a fiduciary or a disqualified person if—

“(A) the transaction is executed through—

“(i) a national securities exchange or a trading system owned by a national securities association registered with the Securities and Exchange Commission, regardless of whether such fiduciary or disquali-



1           fied person (or any affiliate of either) has  
 2           an interest in such exchange or trading  
 3           system,

4           “(ii) an alternative trading system or  
 5           electronic communication network subject  
 6           to regulation and oversight by the Securi-  
 7           ties and Exchange Commission, regardless  
 8           of whether such fiduciary or disqualified  
 9           person (or any affiliate of either) has an  
 10          interest in such alternative trading system  
 11          or electronic communications network, or

12          “(iii) any other trading system for se-  
 13          curities or other property approved by the  
 14          Secretary through regulatory or exemptive  
 15          relief,

16          “(B) the price associated with the pur-  
 17          chase and sale is at least as favorable as an  
 18          arm’s length transaction with an unrelated  
 19          party,

20          “(C) the compensation associated with the  
 21          purchase and sale is not greater than an arm’s  
 22          length transaction with an unrelated party,

23          “(D) in the event the fiduciary or disquali-  
 24          fied person directing the transaction (or any af-  
 25          filiate of either) has an ownership interest in

1 the trading system (other than an exchange or  
2 trading system described in subparagraph  
3 (A)(i)), the execution of transactions on such  
4 system is annually authorized by a plan fidu-  
5 ciary,

6 “(E) the transaction is executed in accord-  
7 ance with the nondiscretionary rules and proce-  
8 dures adopted by such trading system to match  
9 offsetting orders, and

10 “(F) in the event the transaction is not ex-  
11 ecuted on an exchange or trading system de-  
12 scribed in subparagraph (A)(i)—

13 “(i) neither the trading system nor  
14 the parties to the transaction take into ac-  
15 count the identity of the parties in the exe-  
16 cution of trades, and the parties to the  
17 transaction do not actually know the iden-  
18 tity of the other at the time that the terms  
19 and price of the transaction are agreed to,  
20 or

21 “(ii) the transaction is effected pursu-  
22 ant to rules designed to match purchases  
23 and sales at the best price available  
24 through the trading system.”.

1 (d) RELIEF FOR FOREIGN EXCHANGE TRANS-  
2 ACTIONS.—

3 (1) IN GENERAL.—Section 408(b) of such Act  
4 (29 U.S.C. 1108(b)), as amended by subsection  
5 (c)(1), is amended by adding at the end the fol-  
6 lowing new paragraph:

7 “(16) Any foreign exchange transactions, be-  
8 tween a bank or broker-dealer (or any affiliate of ei-  
9 ther), and a plan or an individual retirement account  
10 (within the meaning of section 408 of the Internal  
11 Revenue Code of 1986) with respect to which such  
12 bank or broker-dealer (or affiliate) is a trustee, cus-  
13 todian, fiduciary, or other party in interest, if—

14 “(A) the transaction is in connection with  
15 the purchase, holding, or sale of securities,

16 “(B) at the time the foreign exchange  
17 transaction is entered into, the terms of the  
18 transaction are not less favorable to the plan  
19 than the terms generally available in com-  
20 parable arm’s length foreign exchange trans-  
21 actions between unrelated parties, or the terms  
22 afforded by the bank or broker-dealer (or any  
23 affiliate of either) in comparable arm’s-length  
24 foreign exchange transactions involving unre-  
25 lated parties,

1           “(C) the exchange rate used by such bank  
 2           or broker-dealer (or affiliate) for a particular  
 3           foreign exchange transaction does not deviate  
 4           by more or less than 3 percent from the inter-  
 5           bank bid and asked rates at the time of the  
 6           transaction as displayed on an independent  
 7           service that reports rates of exchange in the  
 8           foreign currency market for such currency, and

9           “(D) the bank or broker-dealer (or any af-  
 10          filiate of either) does not have investment dis-  
 11          cretion, or provide investment advice, with re-  
 12          spect to the transaction.”.

13           (2)     CONFORMING     AMENDMENT.—Section  
 14           4975(d) of such Code, as amended by subsection  
 15           (c)(2), is amended—

16                   (A) by striking “or” at the end of para-  
 17                   graph (17)(E),

18                   (B) by striking the period at the end of  
 19                   paragraph (18)(F)(ii) and inserting “; or”, and

20                   (C) by adding at the end the following new  
 21                   paragraph:

22           “(19) any foreign exchange transactions, be-  
 23           tween a bank or broker-dealer (or any affiliate of ei-  
 24           ther) and a plan or an individual retirement account  
 25           (within the meaning of section 408) with respect to

1       which such bank or broker-dealer (or affiliate) is a  
2       trustee, custodian, fiduciary, or disqualified person,  
3       if—

4               “(A) the transaction is in connection with  
5       the purchase, holding, or sale of securities,

6               “(B) at the time the foreign exchange  
7       transaction is entered into, the terms of the  
8       transaction are not less favorable to the plan  
9       than the terms generally available in com-  
10      parable arm’s length foreign exchange trans-  
11      actions between unrelated parties, or the terms  
12      afforded by the bank or broker-dealer (or any  
13      affiliate of either) in comparable arm’s-length  
14      foreign exchange transactions involving unre-  
15      lated parties,

16              “(C) the exchange rate used by such bank  
17      or broker-dealer (or affiliate) for a particular  
18      foreign exchange transaction does not deviate  
19      by more or less than 3 percent from the inter-  
20      bank bid and asked rates at the time of the  
21      transaction as displayed on an independent  
22      service that reports rates of exchange in the  
23      foreign currency market for such currency, and

24              “(D) the bank or broker-dealer (or any af-  
25      filiate of either) does not have investment dis-

1           cretion, or provide investment advice, with re-  
 2           spect to the transaction.”.

3           (e) CORRECTION PERIOD FOR CERTAIN TRANS-  
 4 ACTIONS INVOLVING SECURITIES AND COMMODITIES.—

5           (1) IN GENERAL.—Section 408(b) of such Act  
 6           (29 U.S.C. 1108(b)), as amended by subsection  
 7           (d)(1), is amended by adding at the end the fol-  
 8           lowing new paragraph:

9           “(17) CORRECTION PERIOD FOR CERTAIN  
 10          TRANSACTIONS INVOLVING SECURITIES AND COM-  
 11          MODITIES.—

12           “(A) IN GENERAL.—Except as provided in  
 13          subparagraphs (B) and (C), a transaction de-  
 14          scribed in section 406(a) in connection with the  
 15          acquisition, holding, or disposition of any secu-  
 16          rity or commodity, if the transaction is cor-  
 17          rected before the end of the correction period.

18           “(B) EXCEPTION FOR EMPLOYER SECURI-  
 19          TIES AND REAL PROPERTY.—Subparagraph (A)  
 20          does not apply to any transaction between a  
 21          plan and a plan sponsor or its affiliates that in-  
 22          volves the acquisition or sale of an employer se-  
 23          curity (as defined in section 407(d)(1)) or the  
 24          acquisition, sale, or lease of employer real prop-  
 25          erty (as defined in section 407(d)(2)).

1           “(C) EXCEPTION FOR KNOWING VIOLA-  
 2 TIONS.—In the case of any fiduciary or other  
 3 party in interest (or any other person knowingly  
 4 participating in such transaction), subpara-  
 5 graph (A) does not apply to any prohibited  
 6 transaction if, at the time such transaction oc-  
 7 curs, such fiduciary or party in interest (or  
 8 other person) knew that the transaction would  
 9 (without regard to this paragraph) constitute a  
 10 violation of section 406(a).

11           “(D) CORRECTION PERIOD.—For purposes  
 12 of this paragraph, the term ‘correction period’  
 13 means the 14-day period beginning on the date  
 14 on which such transaction occurs.

15           “(E) OTHER DEFINITIONS.—For purposes  
 16 of this paragraph—

17           “(i) the term ‘security’ has the mean-  
 18 ing given such term by section 475(c)(2) of  
 19 the Internal Revenue Code of 1986 (with-  
 20 out regard to subparagraph (F)(iii) and  
 21 the last sentence thereof),

22           “(ii) the term ‘commodity’ has the  
 23 meaning given such term by section  
 24 475(e)(2) of such Code (without regard to  
 25 subparagraph (D)(iii) thereof), and

1 “(iii) the terms ‘correction’ and ‘cor-  
 2 rect’ mean, with respect to a transaction,  
 3 undoing the transaction to the extent pos-  
 4 sible, but in any case, making good to the  
 5 plan or affected account any losses result-  
 6 ing from the transaction and restoring to  
 7 the plan or affected account any profits  
 8 made through use of the plan.”.

9 (2) CONFORMING AMENDMENTS.—

10 (A) Section 4975(d) of such Code, as  
 11 amended by subsection (d)(2), is amended—

12 (i) by striking “or” at the end of  
 13 paragraph (18)(F)(2),

14 (ii) by striking the period at the end  
 15 of paragraph (19)(D) and inserting “; or”,  
 16 and

17 (iii) by adding at the end the fol-  
 18 lowing new paragraph:

19 “(20) except as provided in subparagraph (B)  
 20 or (C) of subsection (f)(8), a transaction described  
 21 in subparagraph (A), (B), (C), or (D) of subsection  
 22 (c)(1) in connection with the acquisition, holding, or  
 23 disposition of any security or commodity, if the  
 24 transaction is corrected before the end of the correc-  
 25 tion period.”.



1           (B) Section 4975(f) of such Code is  
 2           amended by adding at the end the following  
 3           new paragraph:

4           “(8) CORRECTION PERIOD.—

5                 “(A) IN GENERAL.—For purposes of sub-  
 6           section (d)(20), the term ‘correction period’  
 7           means the 14-day period beginning on the date  
 8           on which such transaction occurs.

9                 “(B) EXCEPTION FOR EMPLOYER SECURI-  
 10          TIES AND REAL PROPERTY.—Subsection  
 11          (d)(20) does not apply to any transaction be-  
 12          tween a plan and a plan sponsor or its affiliates  
 13          that involves the acquisition or sale of an em-  
 14          ployer security (as defined in section 407(d)(1)  
 15          of the Employee Retirement Income Security  
 16          Act) or the acquisition, sale, or lease of em-  
 17          ployer real property (as defined in section  
 18          407(d)(2) of such Act).

19                “(C) EXCEPTION FOR KNOWING VIOLA-  
 20          TIONS.—In the case of any fiduciary or other  
 21          disqualified person (or any other person know-  
 22          ingly participating in such transaction), sub-  
 23          section (d)(20) does not apply to any prohibited  
 24          transaction if, at the time such transaction oc-  
 25          curs, such fiduciary or disqualified person (or

other person) knew that the transaction would (without regard to subsection (d)(20) or this paragraph) constitute a violation of subparagraph (A), (B), (C), or (D) of subsection (c)(1).

“(D) ABATEMENT OF TAX WHERE THERE IS A CORRECTION.—If a transaction is not treated as a prohibited transaction by reason of subsection (d)(20), then no tax under subsections (a) and (b) shall be assessed with respect to such transaction, and, if assessed, the assessment shall be abated, and, if collected, shall be credited or refunded as an overpayment.

“(E) OTHER DEFINITIONS.—For purposes of this paragraph and subsection (d)(20)—

“(i) the term ‘security’ has the meaning given such term by section 475(e)(2) (without regard to subparagraph (F)(iii) and the last sentence thereof),

“(ii) the term ‘commodity’ has the meaning given such term by section 475(e)(2) (without regard to subparagraph (D)(iii) thereof), and

“(iii) the terms ‘correction’ and ‘correct’ mean, with respect to a transaction,

1           undoing the transaction to the extent pos-  
 2           sible, but in any case, making good to the  
 3           plan or affected account any losses result-  
 4           ing from the transaction and restoring to  
 5           the plan or affected account any profits  
 6           made through use of the plan.”.

7           (C) Section 4975(f)(5) of such Code is  
 8           amended by striking “The terms” and inserting  
 9           “Except as provided in paragraph (8)(E)(iii),  
 10          the terms”.

11          (f) CROSS TRADES STUDY.—Not later than 2 years  
 12 after the date of the enactment of this Act, the Secretary  
 13 of Labor, in consultation with the President’s Working  
 14 Group on Financial Markets, shall report to the President  
 15 and Congress the results of a study on the implications  
 16 for pension plans, plan sponsors, plan fiduciaries, and plan  
 17 participants of a prohibited transaction exemption for ac-  
 18 tive cross trades and the impact that such a prohibited  
 19 transaction exemption could have on the safety and secu-  
 20 rity of pension plan assets. The study shall review and  
 21 include recommendations regarding—

22           (1) the regulation and practice of passive and  
 23          active cross trades in United States securities mar-  
 24          kets,

1           (2) the potential benefits and drawbacks of per-  
2           mitting active cross trades for retirement funds, and

3           (3) the ease or difficulty in policing cross trad-  
4           ing activities for plan sponsors, plan fiduciaries, and  
5           any Federal agency charged with safeguarding the  
6           Nation's retirement funds.

7           (g) GAO STUDY.—The Comptroller General of the  
8           United States shall prepare a preliminary report not later  
9           than 2 years after the date of the enactment of this Act  
10          and a final report not later than 3 years after such date  
11          regarding the effects of the amendments made by this sec-  
12          tion, focusing on the effect of electronic communication  
13          networks and block trading on plan investments and on  
14          the oversight and enforcement activities of the Depart-  
15          ment of Labor to protect the rights of plan participants  
16          and beneficiaries. The Comptroller General of the United  
17          States shall submit the reports required under the pre-  
18          ceding sentence to the Committees on Finance and  
19          Health, Education, Labor, and Pensions of the Senate and  
20          the Committees on Ways and Means and Education and  
21          the Workforce of the House of Representatives.

22          (h) EFFECTIVE DATE.—The amendments made by  
23          this section shall apply to any transaction after the date  
24          of the enactment of this Act.

1 **SEC. 1342. FEDERAL TASK FORCE ON OLDER WORKERS.**

2 (a) ESTABLISHMENT.—Not later than 90 days after  
3 the date of enactment of this section, the Secretary of  
4 Labor shall establish a Federal Task Force on Older  
5 Workers (referred to in this section as the “Task Force”).

6 (b) MEMBERSHIP.—The Task Force established pur-  
7 suant to subsection (a) shall be composed of representa-  
8 tives from all relevant Federal agencies that have regu-  
9 latory jurisdiction over, or a clear policy interest in, pen-  
10 sion issues relating to older workers, including the Inter-  
11 nal Revenue Service and the Equal Employment Oppor-  
12 tunity Commission.

13 (c) ACTIVITIES.—

14 (1) IN GENERAL.—Not later than 1 year after  
15 the date of establishment of the Task Force, the  
16 Task Force shall—

17 (A) identify statutory and regulatory provi-  
18 sions in current pension law that are disincenti-  
19 tives to work and develop legislative and regu-  
20 latory proposals to address such disincentives;  
21 and

22 (B) identify best pension practices in the  
23 private sector for hiring and retaining older  
24 workers, and serve as a clearinghouse of such  
25 information.

1           (2) REPORT.—Not later than 1 year after the  
 2       date of establishment of the Task Force, the Task  
 3       Force shall submit a report to Congress on the ac-  
 4       tivities of the Task Force pursuant to paragraph  
 5       (1). Such report shall be made available to the pub-  
 6       lic.

7           (d) CONSULTATION.—In carrying out activities pur-  
 8       suant to this section, the Task Force shall consult with  
 9       senior, business, labor, and other interested organizations.

10          (e) APPLICABILITY OF FACA; TERMINATION OF  
 11       TASK FORCE.—

12           (1) FACA.—The Federal Advisory Committee  
 13       Act (5 U.S.C. App.) shall not apply to the Task  
 14       Force established pursuant to this section.

15           (2) TERMINATION.—The Task Force shall ter-  
 16       minate 30 days after the date the Task Force com-  
 17       pletes all of its duties under this section.

18       **SEC. 1343. TECHNICAL CORRECTIONS TO SAVER ACT.**

19       Section 517 of the Employee Retirement Income Se-  
 20       curity Act of 1974 (29 U.S.C. 1147) is amended—

21           (1) in subsection (a), by striking “2001 and  
 22       2005 on or after September 1 of each year involved”  
 23       and inserting “2006 and 2010”;

24           (2) in subsection (b), by adding at the end the  
 25       following new sentence: “To effectuate the purposes

1 of this paragraph, the Secretary may enter into a co-  
 2 operative agreement, pursuant to the Federal Grant  
 3 and Cooperative Agreement Act of 1977 (31 U.S.C.  
 4 6301 et seq.), with any appropriate, qualified enti-  
 5 ty.”;

6 (3) in subsection (e)(2)—

7 (A) by striking “Committee on Labor and  
 8 Human Resources” in subparagraph (D) and  
 9 inserting “Committee on Health, Education,  
 10 Labor, and Pensions”;

11 (B) by striking subparagraph (F) and in-  
 12 serting the following:

13 “(F) the Chairman and Ranking Member  
 14 of the Subcommittee on Labor, Health and  
 15 Human Services, and Education of the Com-  
 16 mittee on Appropriations of the House of Rep-  
 17 resentatives and the Chairman and Ranking  
 18 Member of the Subcommittee on Labor, Health  
 19 and Human Services, and Education of the  
 20 Committee on Appropriations of the Senate;”;

21 (C) by redesignating subparagraph (G) as  
 22 subparagraph (J); and

23 (D) by inserting after subparagraph (F)  
 24 the following new subparagraphs:

1           “(G) the Chairman and Ranking Member  
2           of the Committee on Finance of the Senate;

3           “(H) the Chairman and Ranking Member  
4           of the Committee on Ways and Means of the  
5           House of Representatives;

6           “(I) the Chairman and Ranking Member  
7           of the Subcommittee on Employer-Employee  
8           Relations of the Committee on Education and  
9           the Workforce of the House of Representatives;  
10          and”;

11          (4) in subsection (e)(3)(B), by striking “Janu-  
12          ary 31, 1998” and inserting “3 months before the  
13          convening of each summit;”;

14          (5) in subsection (f)(1)(C), by inserting “, no  
15          later than 90 days prior to the date of the com-  
16          mencement of the National Summit,” after “com-  
17          ment”;

18          (6) in subsection (g), by inserting “, in con-  
19          sultation with the congressional leaders specified in  
20          subsection (e)(2),” after “report” the first place it  
21          appears in the text;

22          (7) in subsection (i)—

23                  (A) by striking “for fiscal years beginning  
24                  on or after October 1, 1997,”; and



1 (B) by adding at the end the following new  
 2 paragraph:

3 “(3) RECEPTION AND REPRESENTATION AUTHOR-  
 4 ITY.—The Secretary is hereby granted reception and rep-  
 5 resentation authority limited specifically to the events at  
 6 the National Summit. The Secretary shall use any private  
 7 contributions accepted in connection with the National  
 8 Summit prior to using funds appropriated for purposes  
 9 of the National Summit pursuant to this paragraph.”; and

10 (8) in subsection (k)—

11 (A) by striking “shall enter into a contract  
 12 on a sole-source basis” and inserting “may  
 13 enter into a contract on a sole-source basis”;  
 14 and

15 (B) by striking “in fiscal year 1998”.

Passed the Senate November 16, 2005.

Attest:

*Secretary.*

109TH CONGRESS  
1ST SESSION

# S. 1783

## AN ACT

To amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to reform the pension funding rules, and for other purposes.